

United States
Circuit Court of Appeals
For the Ninth Circuit.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Appellant,

vs.

CECIL WRIGHT,
Appellee.

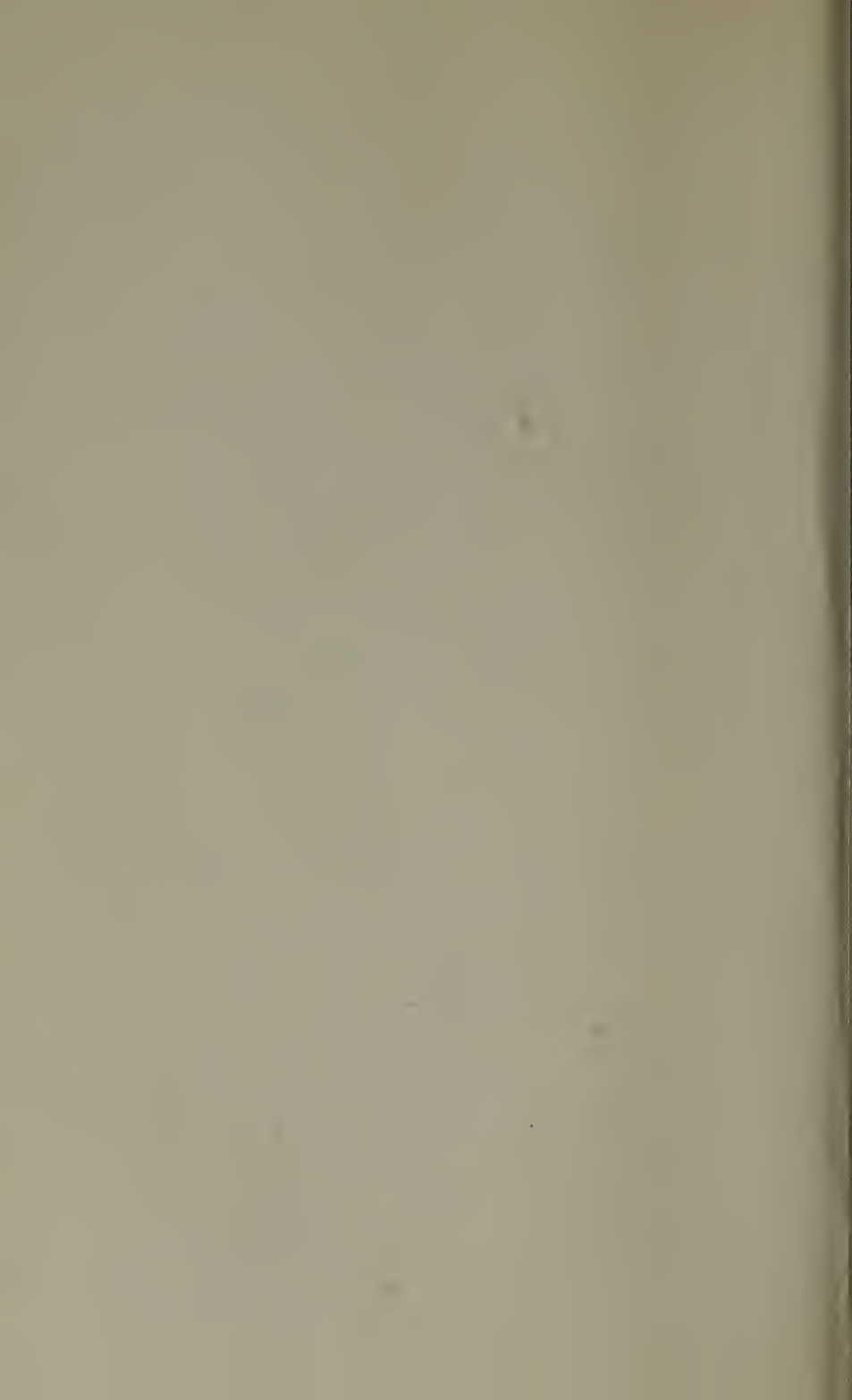
Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

FEB 15 1943

PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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To the Honorable William Denman, one of the
Judges of the Circuit Court of Appeals for the
Ninth Judicial Circuit.

Habeas Corpus No. 23744

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Respondent.

PETITION FOR A WRIT OF HABEAS
CORPUS AD SUBJICIENDUM

(Index, Citations and Statutes Cited Not Copied)

State of California
County of San Francisco—ss.

MOTION AND AFFIDAVIT TO PROCEED IN
FORMA PAUPERIS

Comes now the petitioner, Cecil Wright, being first duly sworn, deposes and says: That he is a citizen of the United States, of legal age, and that he is in the custody of the United States of America and is being illegally restrained of his liberty in the United States Penitentiary, on the Island of Alcatraz, in the State of California.

That he wishes to file and prosecute for a writ of habeas corpus ad subjiciendum, but that by reasons

of his poverty, he is without funds, and he is therefore unable to pay the cost of this action, filing fees, or other cost, and that he has neither property or security with which to secure payment thereof.

That he honestly believes he is lawfully entitled to the redress he seeks; that the foregoing petition is meritorious and is brought in good faith; that this affidavit is made for the purpose of availing affiant of the rights and privileges in such case provided by Section 832 of Title 28 of the United States Code.

Wherefore, Affiant respectfully prays that he may have leave to prosecute said petition for a writ of habeas corpus [1*] ad subjiciendum in forma pauperis without cost or fee pursuant to said Statute.

CECIL WRIGHT,
Affiant.

(Stamp indicating Petitioner is a citizen of the United States.)

(Verification.) [2]

*Page numbering appearing at foot of page of original certified Transcript of Record.

[Title of Court and Cause.]

PETITION FOR A WRIT OF HABEAS
CORPUS AD SUBJICIENDUM

To the Honorable William Denman, Circuit Judge.

Comes now the petitioner Cecil Wright a prisoner illegally restrained of his liberty in the United States Penitentiary, Alcatraz, California, by color of authority of the United States, and he is in the custody of James A. Johnston, Warden of the above-named Penitentiary, located in the jurisdiction of the Honorable William Denman; viz., by color of the authority of warrants of commitments heretofore issued out of the District Court of the United States for the Eastern District of Illinois, Danville, pursuant to the sentences of said Court upon judgments of convictions therein rendered and entered against your petitioner pursuant to his trials therein upon indictments theretofore returned into and filed in said Court charging this petitioner with the commission within the said district and division of penal offenses against the laws of the United States of America, and the restraint is made and continued wholly upon the pretended and colorable warrants and authority aforesaid and none other.

STATEMENT

That he the said Cecil Wright is restrained of his liberty on a commitment in case No. 11032 which has never been executed against the said Cecil

Wright by the United States Marshal from the trial Court.

II.

That his convictions were in violation of the Fifth and Six Amendments to the Constitution of the United States which guaranteed this petitioner the right to have the effective assistance of counsel for his defense, and compulsory process for obtaining witnesses in his favor as well as the right to have a fair trial before an impartial jury. [3]

III.

That the petitioner has served the maximum sentence imposed upon him for violation of Sections 88, 313, 315 and 408 of 18 USCA, and further restraint is double jeopardy when as in this instant case the sentencing Judge testified by deposition on direct interrogatories that he wrote the petitioner shortly after the convictions while petitioner was incarcerated in the state prison and told him that the sentence had begun.

IV.

That he filed for a writ of habeas corpus in the United States District Court for the Northern District of California which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "A".

V.

That an order to show cause was issued on April 6, 1942, which is attached hereto as though incor-

porated herein at length and marked petitioner's Exhibit "B".

VI.

That the respondent having failed to show cause on the appointed date set by the Court, the petitioner filed supplemental and amendatory allegations which is attached hereto as though incorporated herein at length and marked petitioner's Exhibits "C".

VII.

That the respondent filed his return to order to show cause together with commitments Nos. 11074 and 11032, transfer order and record of Court commitments which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "D".

VIII.

That the petitioner filed his traverse to return on order to show cause which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "E". [4]

IX.

That the respondent filed his return to writ of habeas corpus which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "F".

X.

That the Court made an order appointing counsel, but petitioner entered his motion for withdrawal of counsel so that he could appear and plead

in proper person which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "G".

XI.

That the petitioner entered his motion for further proceedings which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "H".

XII.

That the petitioner was produced in Court and testified that he was denied the right to have the effective assistance of counsel for his defense; that he supported his testimony by certified copies of the trial court's records; that he gave the respondent's counsel sufficient time to take deposition from the trial judge and the former United States Attorney; that the trial judge testified on direct interrogatories that he wrote to the petitioner at the state prison and told him the sentence had begun; that in furtherance the trial judge testified that the record of testimony was never transcribed and that the petitioner did not object to the appointment of a colored counsel; that other testimony given by the trial judge was in direct conflict with the certified records of the trial court which was used as exhibits to support petitioner's allegations; that the respondent's counsel failed to refute petitioner's allegations and on direct cross examination the respondent's counsel failed to break down the petitioner's defense; that the petitioner sustained the

burden of proof by the preponderance of the evidence that he was denied the right to have the effective assistance of counsel for his defense; [5] that he sustained the burden of proof by the preponderance of the evidence that he was denied compulsory process for obtaining witnesses in his favor; that he sustained the burden of proof by the preponderance of the evidence that he was denied the right to a fair trial by an impartial jury; that he sustained the burden of proof that his sentence started on September 17, 1930, and expired in full on November 11, 1940; that he sustained the burden of proof that further restraint is double jeopardy.

VIII.

The petitioner filed his preliminary brief and raised two points effecting the indefinite suspension of the execution and enforcement of the judgments after sentence was imposed and advanced and maintained that further restraint was double jeopardy; that in support thereof he cited many cases from decisions from the Supreme Court and appellate Courts; that his preliminary brief in support of these two aforesaid points is on file in Wright vs. Johnston H. C. No. 23647-S.

IX.

That the respondent filed his reply brief and raised allegations that were irrelevant which did not support the issue at bar and avoided citing any case that dealt with the allegations that the trial

court had indefinitely suspended the execution and enforcement of the judgments after sentence was imposed; that the respondent's reply brief is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "I".

X.

That the petitioner filed his closing brief and crossed the respondent's reply brief which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "J".

XI.

That the petitioner introduced an affidavit as evidence which was made in the trial court twenty-four hours after his [6] first arraignment; that the said affidavit gave notice that petitioner could not safely proceed to trial because of the absence of two witnesses; that the said affidavit gave notice that the interest of the parties would be highly conflicting; that attached hereto marked Exhibit "K" is a certified copy of the said affidavit made to the trial court twenty-four hours after said arraignment.

XII.

That a copy of an order made and entered appointing counsel in case No. 11032 is attached hereto marked Exhibit "L" and by reference made a part hereof as though incorporated herein at length.

XIII.

That a copy of an order made and entered on

August 20, 1942, denying petitioner's application is attached hereto marked Exhibit "M" and by reference made a part hereof as though incorporated herein at length.

XIV.

That a certified copy of the indictment, judgment, commitment and marshal's return is attached hereto marked Exhibit "N" and by reference made a part hereof as though incorporated herein at length. (Case No. 11074.)

XV.

That a certified copy of the indictment, judgment, commitment and marshal's return is attached hereto marked Exhibit "O" and by reference made a part hereof as though incorporated herein at length. (Case No. 11032.)

XVI.

That a copy of an original letter from the Chief Clerk of the Illinois State parole board in relation to petitioner's state parole is attached hereto marked Exhibit "R" and by reference made a part hereof as though incorporated herein at length. [7]

XVII.

That a copy of an original letter from the parole officer located at the State Prison in reference to petitioner's parole from the State prison at which time he was taken into custody by the United States Marshal and conveyed to the Leavenworth Penitentiary, is attached hereto marked Exhibit "S"

and by reference made a part hereof as though incorporated herein at length.

XVIII.

JURISDICTIONAL STATEMENT

Power to issue the writ is Vested by statute in any Judge of the District Court or of a Circuit Court of Appeals, or in a Justice of the Supreme Court, or in the District or Supreme Court. (28 USC Sections 451, 452)

The Statute 28 USC Sec. 452, provides:

“The several justices of the Supreme Court and the several judges of the Circuit Courts of Appeals and of the district Courts, within their respective jurisdiction, shall have power to grant writs of habeas Corpus for the purpose of an inquiry into the cause of restraint of liberty. A Circuit judge shall have the same power to grant writs of habeas Corpus within his Circuit that a district judge has within his district; and the order of the Circuit Judge shall be entered in the record of the district Court of the district wherein the restraint complained of is had. (28 USC Section 452).

In *Ex parte Lamar*, 274 Fed. 160, Circuit Judge Manton, at page 163, said: “But the application for the writ is made here to a Circuit Judge of the Circuit Court of Appeals, and not to the Court. The petition upon which the same is based advances the claim that the petitioner is restrained of his liberty, and that his constitutional rights have been

violated. The power is given to the Justices and judges of the Courts, within their respective jurisdiction, to grant writs of habeas corpus for the purpose of an inquiry into the cause [8] of restraint of liberty. And the application for a writ of habeas corpus under Act Feb. 5, 1867, C. 28 Sec. 1; R. S. Sec. 754 (Comp. St. Sec. 1282), "shall be made to the Court or justice or judge authorized to issue the same by complaint in writing", *ect.* And by the same Act (R. S. Sec. 755 (Comp. St. Sec. 1282)) it is provided that a judge to whom such application is made shall forthwith award a writ of habeas corpus unless it appears from the petition itself that the party is not entitled thereto. While the Circuit Courts have been abolished, there is still the office of Circuit judges as created by the statute. While a Circuit judge may not issue a writ of habeas corpus as one of the members constituting the Circuit Court of Appeals, there is still authority vested in him as a Circuit judge to do so, and there is a mandatory provision of the statute requiring him to issue a writ of habeas corpus if the petition be sufficient." And at page 163, Circuit Judge Manton, said: "When the Circuit Courts were abolished, the statute providing for the right of a judge to grant the writ of habeas corpus was not repealed or amended, thus taking away the power from a Circuit Judge. Circuit Judges have become appellate Judges, and while they have no original jurisdiction as a Court, they have reserved to them the right thus vested by the statute and by the ancient

law." I therefore conclude that I have the power to grant the Writ of habeas corpus. (Vide also Ex parte Craig, 274 F. 177, at page 181.)

XIX.

ARGUMENT

The Sixth Amendment Provides In Parts:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, *by an impartial jury* of the state and district wherein the crime shall have been committed, * * * *and to be informed of the nature and cause of the accusations to be confronted with the witnesses in his [9] favor, and to have the assistance of counsel for his defense*". (Italics added).

The Fifth Amendment Provides In Parts:

* * * "*Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; * * * nor be deprived of life, liberty or property without due process of law.*" (Italics added).

In *Glasser v. United States*, 62 S. Ct. 457, the Supreme Court speaking through Mr. Justice Murphy, at 641 (1), said: "In conspiracy cases, where the liberal rules of evidence and the wide latitude accorded the prosecution may and sometimes do operate unfairly against an individual, it is especially important that the defendant be given the benefit of the undivided assistance of his counsel without the Courts becoming a party to encumbering that assistance. USCA Const. Amend. 6. That

in prosecutions for conspiracy to defraud the United States, where the trial court, though advised of the possibility that conflicting interests might arise which would diminish an attorney's usefulness to defendant for whom attorney had entered his appearance as associate counsel, appointed attorney as codefendant's counsel, evidence showed that attorney's representation of defendant was not as effective as it might have been had the appointment not been made, and the Court thereby denied defendant his right to have the effective "assistance of counsel" guaranteed by the Sixth Amendment. Cr. Code. Sec. 37, 18 USCA Sec. 88 USCA Const. Amend. 6. An accused's desire to have the benefit of the undivided assistance of counsel of his own choice should be respected. The right of an accused to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations concerning the amount of prejudice arising from its denial. The trial judge has the duty of seeing that the trial is conducted with solisitude for the essential rights of the accused, and he should protect the [10] right of an accused to have the assistance of counsel. The assistance of counsel guaranteed by the Sixth Amendment contemplates that such assistance be untrameled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests. To preserve the protection of the Bill of Rights for hard-pressed defendants,

every reasonable presumption against a waiver of fundamental rights is indulged. Though an accused may waive the right to the assistance of counsel, whether there is a proper waiver should be clearly determined by the trial court. The guarantee of the Bill of Rights are the protecting bulwarks against the reach of arbitrary power, * * * deemed necessary to insure fundamental human rights of life and liberty. And a federal court cannot constitutionally deprive an accused whose life or liberty is at stake of the assistance of counsel, *Johnson v. Zerbst*, 58 S. Ct. 1019; *Powell v. Alabama*, 53 S. Ct. 55: To preserve against the waiver of fundamental rights, *Aetna Insurance Co. v. Kennedy*, 57 S. Ct. 809; *Ohio Bell Telephone Co. v. Public Utilities Commission*, 57 S. Ct. 724.

In *Avery v. Alabama*, 308 U. S. 444, 447, 60 S. Ct. 322, 84 L. ed. 337, the Supreme Court said: "That the denial of opportunity for appointed counsel to confer, to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the constitution's requirement that an accused be given the assistance of counsel. The constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment. That where denial of the constitutional right to assistance of counsel is asserted, its peculiar sacredness demands that we scrupulously review the record.

In *Powell v. Alabama*, 287 U. S. 45, 52, 53 S. Ct. 55, 58, 77 L. ed. 158, 84 A.L.R. 527, in which the Supreme Court said: [11] "That it was the duty of the court * * * to see that they were denied no necessary incidents of a fair trial. That the guaranteed right to the assistance of counsel includes a fair opportunity to an accused to secure counsel of his own choice and to have the effective and substantial aid of counsel, and also decides that the failure of a trial Court to make an effective appointment of counsel is a denial of due process of law.

In *Thomas v. District of Columbia*, 67 App. D. C. 179, 90 F. (2d) 424, in which this Court held: "Under the Sixth Amendment guaranteeing that in Criminal prosecutions the accused shall enjoy the right to have the assistance of counsel and the "due process of law" clause of the Fifth Amendment, "assistance of counsel" means effective assistance. U.S.C.A. Const. Amends. 5, 6.

In *Walleck v. Hudspeth*, 128 F. (2d) 343, at page 345, the Court said: "In reaching prompt disposition of Criminal cases, a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense.

In *Wood v. United States*, 128 F. (2d) 265, at page 271, this Court said: "The Constitutional "right of accused" to counsel includes time for adequate preparation and extends to every step in the proceedings against the accused. U.S.C.A. Const. Amend. 5.

In *Evans v. Rives*, 126 F. (2d) 633, at page 636, this Court said: "While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial Court, and it would be fitting and appropriate for that determination to appear upon the record." * * *

Petitioner argues that the above and foregoing cases are direct in point with petitioner's allegations that the trial Court denied him the right to have the effective assistance of Counsel for his defense as guaranteed to him [12] under the Sixth Amendment; that in view of the affidavit for a continuance (exhibit K) petitioner was denied compulsory process for obtaining witnesses in his favor as guaranteed to him by the Sixth Amendment; that having been forced to trial on a twenty-four hours notice was without due process of law as guaranteed by the Fifth Amendment; that having been denied a separate trial from the confessed guilty parties forced upon the petitioner a trial that was unfair and unjust and was in violation of the Sixth Amendment which guaranteed petitioner the right to a fair trial before an impartial jury. The petitioner's right to a fair trial would involve each of the above and foregoing elements, see *Sunderland v. United States*, 19 F. (2d) 202, 216, (and cases cited).

Petitioner argues that in view of the trial court's records it clearly shows that the Court failed to make an effective appointment of counsel; that there are other records of exhibits on file in the Clerks

Office of the United States District Court San Francisco and your petitioner has no objections if Your Honor wishes to inspect the records in the case of Cecil Wright, Petitioner vs. James A. Johnston, Warden, *ect.* No. 23647-S.

Petitioner argues that the trial Court indefinitely suspended the execution and enforcement of the judgments after sentence was imposed; that the trial Court failed to fix a definite date for the commencement of the sentence; that the Clerk of the trial Court entered a specification which was no part of the sentence past by the trial judge.

Petitioner argues that the trial Clerk has no power to enter provisions. *Hill v. U. S.*, 298 U. S. 460, 56 S. Ct. 760, 80 L. ed. 1283. (Vide Exhibit "E" page 73).

Petitioner argues that his sentence started at time of commitment and custody thereunder rather than at time of parole by State Authorities. *Smith v. Swope*, (C.C.A. 9th) [13] 91 F. (2d) 260. (Vide Exhibit "A" pages 19-23).

Petitioner argues that he was first indicted by the Federal Court and was under exclusive custody of the United States Marshal and was entitled to serve his federal sentence first. *Albori v. United States*, (C.C.A. 9th) 67 F. (2d) 4. (Vide Exhibit "E" pages 74-77).

Petitioner argues that his state sentence was for not less than one year and no more than natural life and that the state parole board paroled peti-

tioner for the maximum of his sentence. Vide Exhibits "R". "S".

CONCLUSIONS

Petitioner waives his right to appear in this cause and states that the Honorable William Denman may decide the case from the certified records of the trial Court which is attached hereto and set forth in the appendix.

Wherefore, petitioner respectfully prays that his petition for a writ of habeas corpus may be granted and that he be restored to his liberty, and your petitioner will every pray.

Respectfully submitted,

CECIL WRIGHT,

Petitioner.

(Verification)

APPENDIX TO EXHIBITS

Appendix No. 1

EXHIBIT "A"

Petitioner's Certified Application to the United States District for the Northern District of California Southern Division, San Francisco, California. [14]

In the District Court of the United States of
America Within and for the Northern
District of California, Southern
Division Thereof

Civil Action H. C. No. 23647-S

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

Comes now the petitioner, Cecil Wright, in propria persona, and states he is unjustly and unlawfully detained and imprisoned in the United States Penitentiary in Alcatraz, San Francisco County, in the State of California, by James A. Johnston, Warden of the said penitentiary, for the reasons that the United States District Court for the Eastern District of Illinois, Danville, in which court said petitioner was indicted, tried, convicted, sentenced, and committed for the term of fifteen years to the said United States Penitentiary at Leavenworth, Kansas, of burglary, larceny, conspiracy and National Motor Vehicle Theft Act, a copy of said indictments, sentences, orders and commitments is attached hereto and made a part hereof, had no jurisdiction to exceed the maximum punishment regulated by statute.

Exhibit "A"—(Continued)

(1) Petitioner states that the said James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, hereinafter referred to as the respondent, and Cecil Wright, petitioner herein, are both within the jurisdiction of this Honorable Court; that said respondent and the United States Penitentiary, Alcatraz, California, are one and the same and within a distance of three miles of the above-entitled Court; that this petitioner is so entitled to be brought before the above-entitled Court at a time not to exceed three days from the time the said respondent fails to show cause why a writ of habeas corpus should not issue as prayed for herein by this petitioner, R. S. Sec. 758 (28 U.S.C. Sec. 458).

(2) This Honorable Court has jurisdiction to issue a writ of habeas corpus for the purpose of an examination of the judgments and commitments; that the purpose of a Writ of habeas corpus is to go back of the commitment for an examination of the records.

(3) Petitioner states that he is restrained of his liberty by virtue of a judgment and sentence which were void on November 11, 1940; that the petitioner was sentenced to terms totalling fifteen years; that the judgments and sentences were imposed by the United States District Court, Eastern District of Illinois, Danville, on September 17, 1930; that attached hereto, marked Exhibit "A" and made a part hereof as though fully set forth herein at length

Exhibit "A"—(Continued)

is a true and certified copy of indictments, judgments and commitments No. 11032 and 11074, hereinafter referred to.

(4) Petitioner states that his conviction and sentence in cases No. 11032 and 11074 was in violation of the Fifth and Sixth Amendments of the United States Constitution; that the petitioner was entitled to have assistance of counsel for his defense; that petitioner was further entitled to have counsel of his own choice; that the trial court forced the appointment of a colored attorney upon the petitioner; that the trial court forced the petitioner to accept appointment of an attorney, which said attorney had been appointed on the same day to represent four other defendants; that said appointment of counsel was only a formal compliance with the Sixth Amendment; that the Sixth Amendment guarantees the accused the right to have assistance of counsel for his defense; that petitioner could not have assistance of counsel for his defense under such circumstances; that petitioner should have been granted an opportunity to employ counsel of his own choice; that without counsel to prepare his case for trial was a violation of the due process of law clause provided for in the Fifth Amendment.

* * * * *

(6) Petitioner states he has earned eighteen hundred (1800) days statutory good time on sentences totalling fifteen years; that within the meaning of the (Act of Congress Public 170—1902) pe-

Exhibit "A"—(Continued)

tioner was eligible for deduction of good time at the rate of ten days a month from date of sentence; that since and after petitioner was sentenced he has lived in accordance with the rules and regulations of the various prisons in which he has been continuously confined since [16] September 17, 1930.

(7) Petitioner states he is being twice punished for the same offenses; that further imprisonment is in violation of Section 88, 313, 315 and 408 of the Code of Laws of the United States; that double jeopardy attaches after serving ten years, one month and twenty-five days from date of sentence.

SUMMARY OF ARGUMENT

Petitioner makes three parts to his argument: First, petitioner was entitled to have assistance of counsel for his defense, this falls within the ratio of *Powell v. Alabama*, 287 U. S. 45, 52, 53 S. Ct. 55, 58, 77 L. ed. 158, 84 A.L.R. 527. Second, petitioner has earned eighteen hundred (1800) days good time, this falls within the (Act of Congress Public 170—1902). Third, petitioner is being twice punished for the same offenses, this falls within the Fifth Amendment of the United States Constitution.

ARGUMENT

I.

(a) Petitioner states he was entitled to assistance of counsel for his defense; that such an ap-

Exhibit "A"—(Continued)

pointment of counsel in this petitioner's case was only a formal compliance with the Sixth Amendment.

The Sixth Amendment provides in part:

"* * * To have compulsory process for obtaining witnesses for his favor, and to have the assistance of counsel for his defense."

The Fifth Amendment provides in parts:

"* * * *Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law!*" (Italics added)

(b) Petitioner, citing *Powell v. Alabama*, *Supra*, in which the Supreme Court held: "It was the duty of the court * * * to see that they were denied no necessary incident of a fair trial.

(c) Petitioner states that he is unjustly and unlawfully detained and imprisoned and deprived of his liberty by the respondent herein, for the reason that at the time of his said trial in the said State and District of Illinois he request- [17] ed the said United States District Court, District of Illinois, Eastern District, to allow him sufficient time to employ a counsel to prepare his defense, that said court refused the request and in violation of petitioner's rights and over this petitioner's objection said court appointed a counsel (colored

Exhibit "A"—(Continued)

attorney) of its own choosing to represent this petitioner in his aforesaid-mentioned trial; that the same counsel had been appointed to represent four other persons on the same day on trial before a jury; that the said counsel was not capable of defending five persons on a twenty-four hour notice; that at no time did this petitioner acquiesce in said appointment and at no time did he waive, in any manner whatsoever, his rights to counsel as guaranteed to him by the Sixth Amendment to the Constitution of the United States and because thereof this petitioner was denied his rights guaranteed to him under the Sixth Amendment of the Constitution of the United States, as set out above.

(d) Petitioner states that the trial court withheld the said indictments until September 16, 1930; that on that day of the 16th day of September, this petitioner was brought before the trial court; that said trial court appointed a counsel (colored attorney) to represent this petitioner and four other persons on the same date, and said appointment was over the objections of this petitioner.

(e) Petitioner, citing *Powell v. Alabama*, *Supra*, in which the Supreme Court held: "That the guaranteed right to the assistance of counsel includes a fair opportunity to an accused to secure counsel of his own choice and to have the effective and substantial aid of counsel, and also decides that the failure of a trial court to make an effective appointment of counsel is a denial of due process within

Exhibit "A"—(Continued)

the meaning of the Fourteenth Amendment." For same effect as due Process of Law, vide: U.S.C.A. 5.

(f) Petitioner, citing *Johnson v. Zerbst*, 304 U. S. 458, 58, S. Ct. 1019, 82 L. ed. 1461, in which the Supreme Court held: "Under the Sixth Amendment guaranteeing that in criminal prosecutions the accused shall enjoy the right to have assistance of counsel, if an accused is not represented by counsel and has not intelligently and competently waived his constitutional right thereto, the guaranty stands as a judicial bar to a valid conviction. U.S.C.A. Const. Amend. 6.

(g) Petitioner, citing *Thomas v. District of Columbia*, 67 App. D.C. 179, 90 F. (2) 424, in which the court held: "Under the Sixth Amendment guaranteeing that in criminal prosecutions the accused shall enjoy the right to have assistance of counsel and the "due process of law" [18] clause of the Fifth Amendment, "assistance of counsel" means effective assistance. U.S.C.A. Const. Amend. 5, 6.

(h) Petitioner states that in his case the same counsel (colored attorney) was appointed five times on the same day; that the five separate appointments appears in petitioner's exhibit "A";; that the appointment in this case of the petitioner was a mere formal compliance with the Sixth Amendment that an accused be given the assistance of counsel.

(i) Petitioner, citing *Avery v. Alabama*, 308 U.S. 444, 447, 60 S. Ct. 321, 322, 84 L. ed. 337, in

Exhibit "A"—(Continued)

which the Supreme Court held: "But the denial of opportunity for appointed counsel to confer, to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment."

(j) Petitioner's states that the only possible means for assistance of counsel for his defense within the meaning of the Fifth and Sixth Amendment, would have been if the trial court had given this petitioner an opportunity to employ counsel of his own choice; that the appointment of one counsel to represent five defendants and to defend nine indictments on a twenty-four hour's notice was without due process of law within the meaning of the Fifth Amendment; that such an appointment can only be regarded as a sham and nothing more. *Avery v. Alabama*, *Supra*.

(k) Petitioner further states the guarantee for assistance of counsel for his defense within the meaning of the Sixth Amendment, states clearly in simple words that the accused shall have the assistance of counsel for his defense, and this does not mean that counsel can be appointed to represent this petitioner, if there be more than one appointment for the purpose of defending other defendants on the same day. Here in the petition-

Exhibit "A"—(Continued)

er's case he chose to employ counsel to represent his case and his choice of counsel was that of a man from the white race; that this petitioner did not choose to have a colored man to represent his case, that this petitioner was not given an opportunity to correspond with his mother for the purpose of employing counsel of his own choice; that the trial court forced the case to trial leaving this petitioner without a proper defense counsel. [19]

(l) Petitioner, citing *Avery v. Alabama*, *Supra*, in which the Supreme Court said: "But where denial of the constitutional rights to assistance of counsel is asserted, its peculiar sacredness demands that we scrupulously review the record."

(m) Petitioner, citing *Glasser v. United States*, 62 S. Ct. 457, in which Mr. Murphy, Justice, wrote the opinion, and Justices Stone and Frankfurter dissenting, in which the Supreme Court speaking through Mr. Murphy said: (9) "The assistance of counsel guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interest." (10) "To preserve the protection of the Bill of Rights for hard-pressed defendants, every reasonable presumption against a waiver of fundamental rights in indulged." (11) "The fact that defendant was an attorney was immaterial, in regards to his rights to the assistance of counsel, * * * and through his professional experience might

Exhibit "A"—(Continued)

be a factor in determining if he waived his rights to the assistance of counsel it was by no means conclusive." (12) "The trial judge has the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused and he should protect the right of an accused to have the assistance of counsel." (15) "An accused desire to have the benefit of the undivided assistance of counsel of his own choice should be respected." (16) "The right of an accused to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations concerning the amount of prejudice arising from its denial."

(n) Petitioner states it was his desire to have a separate counsel from the confessed guilty parties; that it was also this petitioner's desire to have a lawyer from the white race to represent his case; that this petitioner could have employed counsel of his own choice if the trial court had granted him sufficient time to correspond with his mother; that the petitioner asked for a short continuance to enable him to employ counsel of his own choice; that this petitioner is a white man and it was this petitioner's right to choose a lawyer of the white race.; this petitioner was on trial with four other defendants and it was this petitioner's desire to have his case represented by separate counsel. Vide: *Glasser v. United States*, *Supra*. This petitioner could not have effective assistance of counsel unless he was given counsel to cross-examine the

Exhibit "A"—(Continued)

witnesses; that this petitioner was on trial jointly with several other defendants which said [20] defendants had prior to trial confessed and implicated this petitioner into their wrong doings; the appointed counsel was appointed to defend five defendants on the same date; that the appointment of counsel was to represent five defendants and not to defend either of the five separately; that this petitioner had no counsel to protect his rights as guaranteed by the Sixth Amendment; that this petitioner did object to the said appointment, and over this petitioner's objections the trial court forced the appointment of a colored attorney upon this petitioner; that the said appointed counsel on this petitioner's request filed an affidavit for a continuance so as to give this petitioner an opportunity to employ counsel of his own choosing; that said affidavit was for the purpose of availing this petitioner the right to choice of counsel, as well as subpoenaing vital witnesses for his defense; that this petitioner was forced to trial without counsel for his defense; that the case of *Glasser v. United States, Supra*, is direct controlling in this petitioner's case, and to be considered otherwise would be overruling the Supreme Court's recent decision in *Glasser v. United States, Supra*. The petitioner states that *Powell v. Alabama, Supra*, is direct in point and controlling here in this petitioner's case. That *Johnson v. Zerbst*, 58 S. Ct. 1019, is also

Exhibit "A"—(Continued)

controlling here in this petitioner's case in respect to have the assistance of counsel for his defense.

(o) Petitioner, citing *Walker v. Johnston*, 61, S. Ct. 574, in which the Supreme Court said: "Judicial inquiry into truth and substance of cause of detention of petitioner seeking writ of habeas corpus involves the reception of testimony."

Petitioner, citing *Walker v. Johnston*, *Supra*, in which the Supreme Court held: "If the petition for writ of habeas corpus, the return, and traverse raise substantial issue of facts, it is petitioner's right to have these issues heard and determined in manner prescribed by statute." 28 U.S.C.A. Sections 451, 454, 455, 457.

(p) Petitioner, citing *Walker v. Johnston*, *Supra*, in which the Supreme Court said: "The government contentions that petitioner's allegations were improbable and unbelievable could not serve to deny the petitioner an opportunity to support them by evidence." 28 U.S.C.A. Sections 451, 454, 455, 457.

(q) Petitioner, citing *Walker v. Johnston*, *Supra*, in which the Supreme Court said: "The question whether petitioner carried his burden of proof and showed [21] his right to discharge was to be determined by the whole of the testimony and not by pleadings and affidavits.

(r) Petitioner, citing *Walker v. Johnston*, *Supra*, in which the Supreme Court held: "Where allegations of petition for writ of habeas corpus and traverse and the return and accompanying

Exhibit "A"—(Continued)

presents an issue of facts the proper procedure is to issue writ of habeas corpus have the petitioner produced, and hold a hearing at which evidence is received.

(s) Petitioner states the refusal to permit the accused to prove his defense may prove trivial when the facts are developed. Procedural errors often are. But procedure is the skeleton which forms and supports the whole structure of a case. The lack of a bone mars the symmetry of the body; the parties must be given an opportunity to plead and prove their contentions or else the impression of the judge arising from sources outside the record dominates results. The requirement that allegations must be supported by evidence tested by cross-examination protects against falsehood. The opportunity to assert rights through pleadings and testimony is essential to their successful protection. Infringement of that opportunity is forbidden.

II.

(A) Petitioner states he has earned eighteen hundred (1800) days statutory good time on sentences totalling fifteen years; that if the sentence of September 17, 1930 was a valid judgment of conviction the petitioner would be entitled to good time deduction at the rate of ten days per month; that in this case as shown by the records of the respondent this petitioner has eighteen hundred (1800) days statutory good time to his credit; that

Exhibit "A"—(Continued)

if the sentence of September 17, 1930 is a valid sentence the deduction of good time would be estimated from such date of judgment; that if the sentence was not a valid judgment on the date it was imposed, then it must be void; if its void the petitioner is entitled to his discharge, if it's valid the petitioner is entitled to eighteen hundred (1800) days good time and would have been subject to release on November 11, 1940.

(B) Petitioner, citing *Ex parte U.S.*, 242 U.S., 27, in which the Supreme Court said: "That practice of suspending sentences by trial judges became so prevalent that the government filed an original proceeding in the United States Supreme Court to mandamus a district judge who was engaging in such a practice and the Supreme Court's decree is that proceedings ended for all times the practice. See Page 75, parag. A, enforcement of sentence.

* * * * *

(G) Petitioner states if the judgment and sentence of September 17, 1930, was valid the trial court could not suspend its operation. *Ex parte U.S.*, *Supra*; if the sentence was valid on the date of judgment and sentence its void now by lapse of time; if the judgment and sentence was not valid it must be void and if it's void the petitioner is subject to discharge, if it's not void and valid it's subject to attack by the writ of habeas corpus.

(H) Petitioner states if the commitments be void the writ will issue to inquire into records back

Exhibit "A"—(Continued)

of it; the commitments are void in this instant case and the writ lies to inquire and for an examination of the true cause of this petitioner's detention. Vide: Petitioner's Exhibit "A" commitment.

(I) Petitioner, citing (Public 170—Act of Congress 1902) in which Congress held: "The good time allowance from a prisoner's sentence shall be deducted on a sentence of ten years or more at the rate of ten days a month; that if the prisoner has several sentences to run consecutively the aggregation shall be based on the total of such sentences and the deduction of good time allowed accordingly."

(J) Petitioner states at the time of judgment and sentence in his case September 17, 1930, the Act of Congress, *Supra*, was in effect; that this petitioner was allowed good time deduction on his sentence from the date of judgment and sentence entered upon the records of the court; that the Act of Congress, *Supra*, did not provide for the commencement of a term of imprisonment, and in the ab- [23] sence of statute the time of one's sentence begins to run from the date shown by the judgment and commitment.

(K) Petitioner, citing *In re Jennings*, 118 F. 31 (C.C.Mo.) at Page 479, 480, 481, 482, in which the Court speaking through Thayer, Circuit Judge said: "A United States marshal who has been directed, by a judgment and sentence of the court imposing a term of imprisonment on a defendant

Exhibit "A"—(Continued)

convicted of crime, to convey such defendant to a penitentiary, and deliver him to the keeper, in execution of the sentence, has no authority to surrender the prisoner to the marshal of another district, to be tried for another offense, and his action in so doing is illegal." *Id.*

(L) Petitioner, citing *In re Jennings*, *Supra*, on page 481, in which the court said: "The judgment and sentence in question commanded the marshal to convey the prisoner to Ft. Leavenworth, "without delay, and deliver him to the custody of the keeper of said penitentiary." From what source the marshal derived his authority to act differently, and to disobey the plain mandate of the court whose officer he was, is not disclosed; and such conduct on the part of a ministerial officer is so far subversive of judicial authority and at variance with the established course of judicial procedure as to warrant the belief that no authority or precedent can be found which would justify such action. The law contemplates that, after a prisoner has been tried and sentenced, he will be committed at once to the custody of the prison officials where the sentence is to be executed. He passes by virtue of the sentence into a custody different from that of the court before which he was convicted." *Id.*

(M) Petitioner states *In re Jennings*, *Supra*, the case as cited is controlling in respect to the marshal's failure to obey the mandate of the court. Here in the case of the petitioner's arose a

Exhibit "A"—(Continued)

situation identical with that of the (Jennings Case, Supra), and the court held in the (Jennings Case, Supra), that the marshal's failure to comply with commitment did not postpone the execution of sentence.

(N) Petitioner, citing *Cox v. McConnell* (C.C.A. Ga. 1935) 80 F. (2) 258, in which the court held: "Prisoner held entitled in habeas corpus proceeding to determination of his right to good-time allowance, where allowance would warrant his release if service of sentence began immediately." *Id.*

(O) Petitioner states he has earned eighteen hundred (1800) days statutory [24] good time and is entitled to release by habeas corpus; that the records of the respondent shows the petitioner was given eighteen hundred (1800) days good time which reduced the sentences of fifteen years to ten years and twenty-five days from the date of judgment and commitment; that said petitioner has all times since his imprisonment under the color and authority of the judgment and sentence of the United States District Court, Eastern District of Illinois, Danville, lived and abided by such rules and regulations and in conformity with the said rules of the various penitentiaries in which said petitioner has been continuously confined under said judgment and sentence since September 17, 1930. That this petitioner is entitled to have his rights determined by habeas corpus. *Vide: Cox v. McConnell, Supra.* And the right to have the facts considered by habeas corpus is controlled by stat-

Exhibit "A"—(Continued)

ute. Walker v. Johnston, Supra, Vide: 28 U.S.C.A. Sections 451, 454, 445, 457.

(P) Petitioner, citing Singstack v. Hill (D.C. Pa. 1936), "Warrant of commitment, being final process for carrying judgment into effect, is predicated upon the judgment, must be in substantial accord therewith, and cannot vary or contradict the judgment." Id.

(Q) Petitioner states the commitment in his case contradicts the judgment; the commitment is dated September 17, 1930, and has no such provisions that the execution of the judgment should be delayed. Vide: Petitioner's Exhibit "A" commitment. Vide: In re Jennings, Supra.

(R) Petitioner, citing Ex parte Lyman, 247 Fed. 611, in which the court held: "The time of ones sentence begins to run from the date he is received by the Warden of the penitentiary, *or from the time he is sentenced as shown by the date of such judgment.*" Id. (Italics added)

(S) Petitioner states the judgments in his case shows the date of September 17, 1930; that there is no other date included therein and therefore the case Ex parte Lyman, Supra, is controlling in this petitioner's case. Vide: Petitioner's Exhibit "A" judgment.

(T) Petitioner, citing U.S. v. Dougherty, 299 U.S. 326, 70 L. ed. 309, 46 S. Ct. 156, in which the Supreme Court said: "The sentence should be couched in direct, clear and unambiguous lan-

Exhibit "A"—(Continued)

guage, admitting of no uncertainty in any of its terms." Id. Vide Post: U.S. v. Patterson, 29 F. 775.

(U) Petitioner states a specification entered under petitioner's Exhibit "A" [25] states the federal sentence shall begin upon the *expiration* of a sentence of not less than one year and no more than *natural life*; this the petitioner contends is the true meaning of the provisions entered under petitioner's Exhibit "A" judgment; that this petitioner was under such a State sentence at the time of his conviction in the federal court; that the maximum on this petitioner's State sentence was *natural life*; that this petitioner had only served *fifty-two days* of the State sentence; that the sentence imposed by the State Court has not as yet expired and this petitioner is subject to State Parole for the remainder of his *natural life*; the order of the District Court that the federal sentence shall begin upon the expiration of the aforesaid State sentence is too *Indefinite*; the specification is not only indefinite, it is *ambiguous* in its terms and *senseless* in its meaning; that such a specification is not within the meaning of law and therefore *void*. Vide: U.S. Dougherty, Supra, for the same effect, Vide: U.S. v. Patterson, 29, F. 775. (Italics added)

(V) Petitioner, citing Miller v. Aderhold, 288 U.S. 206, 210, 77 L. ed. 702, 705, 53 S. Ct. 325; Hill v. U. S., 298 U.S. 460, 464, 80 L. ed. 1283, 56 S. Ct. 760, in which the Supreme Court said: "The choice

Exhibit "A"—(Continued)

of pains and penalties, when choice is committed to the discretion of the court, is part of the judicial function. This being so, it must have expression in the sentence, and the sentence is the judgment."

* * * * *

(X) Petitioner, citing *Smith v. Swope* (C.C.A.) 91 F. (2) 260, in which the Circuit Court of Appeals for the Ninth Circuit said: "Where marshal has custody of sentenced prisoner was ordered to deliver him 'forthwith' but held prisoner in County Jail and surrendered him to State Authority, prisoner's service of sentence was deemed to begin at time of commitment and custody thereunder, rather than at date of actual commitment after prisoner's parole by State Authorities." *Id.* [26]

(Y) Petitioner states he was committed to the County Jail from September 14, 1930, until September 18, 1930; that this petitioner was under exclusive custody of United States marshal before and after judgment and sentence; that this petitioner's sentence began on date of sentence and time of commitment and custody thereunder rather than at time of parole by State Authorities. *Vide: Smith, Supra*, and cases therein cited.

(Z) Petitioner, citing *Ex parte Friday*, 43 Fed. 916; *U. S. v. Pile*, 130 U. S., 280; *U. S. v. Malone*, 9 Fed. 897; *U. S. v. Patterson*, 29 Fed. 775, in which the courts held: "After the expiration of the term of court the trial court had no further control over the valid judgment or sentence which it had ren-

Exhibit "A"—(Continued)

dered, and cannot vacate, reform, or change it or pronounce a new sentence."

(Z-2) Petitioner states the trial court declared the judgment and sentence of September 17, 1930, a valid sentence; that this petitioner did not challenge the judgment and sentence until they had expired by lapse of time; that the trial court could not reform the judgment and sentence; that the trial court could not change the judgment and sentence of September 17, 1930, or pronounce a new sentence. Vide: *Ex parte Friday*, *Supra*; *U. S. v. Pile*, *Supra*; *U. S. v. Malone*, *Supra*. For the same effect, Vide: *U. S. v. Patterson*, *Supra*.

III.

(A) Petitioner states that further restraint and detention under said judgment and sentence of September 17, 1930, is double jeopardy within the meaning of the Fifth Amendment of the United States Constitution; that the Fifth Amendment, *Supra*, provides 'nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb'; that this petitioner has been in jeopardy since and at all times after November 11, 1940; that this petitioner is being twice punished for the same offenses within the meaning of the Fifth Amendment of the United States Constitution.

(B) Petitioner, citing 18 U.S.C.A. Sec. 88, Criminal Code 37, in which Congress enacted and has at all times since such enactment declared that such an act to be constitutional, and that any per-

Exhibit "A"—(Continued)

son in violation of this aforesaid act shall be punished not to exceed a maximum sentence of two years imprisonment, and a fine not to exceed ten thousand dollars, or both.

(C) Petitioner, citing 18 U.S.C.A. Sec. 313, in which Congress enacted and has [27] at all times since such enactment declared that such an act to be constitutional, and that any person in violation of this aforesaid act shall be punished not to exceed a maximum sentence of three years imprisonment, and a fine not to exceed one hundred dollars, or both.

(D) Petitioner, citing 18 U.S.C.A. Sec. 315, in which Congress enacted and has at all times since such enactment declared that such an act to be constitutional, and that any person in violation of this aforesaid act shall be punished not to exceed a maximum sentence of five years imprisonment and a fine not to exceed one thousand dollars, or both.

(E) Petitioner, citing 18 U.S.C.A. Sec. 408, in which Congress enacted and has at all times since such enactment declared that such an act to be constitutional, and that any person in violation of this aforesaid act shall be punished not to exceed a maximum sentence of five years imprisonment and a fine not to exceed five thousand dollars, or both.

(F) Petitioner states that Congress intended that this petitioner be punished within the scope of Sections 88, 313, 315 and 408 of Title 18 of the Code of Laws of the United States; that Congress

Exhibit "A"—(Continued)

did not vest any power upon the trial court to increase the sentence of imprisonment; that this petitioner has satisfied the maximum punishment that Congress intended to inflict upon him, and in accordance with (Public—170—Act of Congress) this petitioner's allowance of good time reduced the aggregated sentence of fifteen years to ten years and twenty-five days.

(G) Petitioner states that Sections 88, 313, 315 and 408 of Title 18 of the Code of Laws of the United States in this instant case are void without due process of law within the meaning of the Fifth Amendment of the Constitution of the United States; that further imprisonment is double jeopardy in violation of the jeopardy clause of the Fifth Amendment.

Wherefore, your petitioner prays that a writ of habeas corpus may be granted, directed to the said James A. Johnston, Warden as aforesaid, commanding him to have the body of said Cecil Wright before your Honor at a time and place therein to be specified then and there to do and receive what your Honor shall order concerning said Cecil Wright, together with the time and cause of his detention, and that your petitioner may be restored to his liberty. [28]

Respectfully submitted,
CECIL WRIGHT,
Petitioner.

Dated: March 26, 1942.

Exhibit "A"—(Continued)

State of California

County of San Francisco—ss.

Cecil Wright, being duly sworn, deposes and says: That he is the petitioner in the above-entitled action; that he has read the foregoing petition for a writ of habeas corpus and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to these matters he believes it to be true.

CECIL WRIGHT,

Affiant-Petitioner.

Subscribed and sworn to before me this 26 day of March, 1942.

[Seal]

E. J. MILLER,

Associate Warden,

United States Penitentiary,

Alcatraz, California.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths. [29]

APPENDIX No. 2

EXHIBIT "B"

ORDER TO SHOW CAUSE [30]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

On reading and filing the petition of Cecil Wright, and good cause appearing therefor,

It Is Hereby Ordered that James A. Johnston, Warden of the United States Penitentiary at Alcatraz Island, be and appear before this Court, at the Courtroom of A. F. St. Sure, Judge thereof, in the United States Post Office Building, 7th and Mission Streets, in the City and County of San Francisco, State of California, on the 27th day of April, 1942, at the hour of 10:00 A.M., and then and there [31] show cause, if any he has, why a writ of habeas corpus should not issue as prayed for in the petition filed herein, and

It Is Further Ordered, that a copy of this order and a copy of the said petition for a writ of habeas corpus be served upon the said James A. Johnston not less than five (5) days prior to the date set for hearing thereof, and that the custody of the said Cecil Wright shall not be disturbed pending the final determination of the proceedings on said petition.

Dated: April 6, 1942.

A. F. ST. SURE

Judge of the United States
District Court

Receipt of a copy of the above is hereby admitted
this 6th day of April, 1942.

Assistant United States
Attorney

[Endorsed]: Original filed Apr. 6, 1942. [32]

APPENDIX No. 3

EXHIBIT "C"

PETITIONER'S SUPPLEMENTAL AND
AMENDATORY ALLEGATIONS [33]

[Title of Court and Cause.]

PETITION FOR A WRIT OF HABEAS
CORPUS AD SUBJICIENDUM

To the Honorable Judge A. F. St. Sure.

Now comes the petitioner, Cecil Wright, moves and petitions this Honorable Court to issue a writ of habeas corpus ad subjiciendum for the following reasons, viz.: that said petitioner sued for a writ of habeas corpus against James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, and that upon reading and filing said petition the Honorable A. F. St. Sure made an order to show cause directed at the respondent James A. Johnston, Warden as aforesaid, to appear on April 27, 1942, and to show cause, if any he has, why a writ of habeas corpus should not issue as prayed for in the petition filed in the above-entitled cause.

Exhibit "C"—(Continued)

(A) Petitioner states that if the return has been filed in behalf of the respondent through the office of the United States Attorney, then it is this petitioner's right to a copy of said return for the purpose of traversing the same.

(B) Petitioner states that if no return has been filed in behalf of the said respondent the writ of habeas corpus should issue as prayed for in the said petition filed in the above-entitled and numbered cause.

(C) Petitioner further states if no return was made and entered on April 27, 1942, then this petitioner realleges, reasserts, and reaffirms all the facts, matters, and things set forth in his petition for a writ of habeas corpus on file in the above-named Court entitled Cecil Wright, petitioner, vs. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, Respondent, No. 23647-S.

(D) Petitioner states that he, the said Cecil Wright, is unlawfully imprisoned, detained and restrained of his liberty in the United States Penitentiary, Alcatraz, California, by color of authority of the United States, and he is in the [34] custody of James A. Johnston, Warden of the above-named penitentiary, located in the jurisdiction of this Court; viz., by color of the authority of a warrant of commitment heretofore issued out of the District Court of the United States for the Eastern District of Illinois, Danville, pursuant to the sentence of said Court upon a judgment of conviction therein

Exhibit "C"—(Continued)

rendered and entered against your petitioner pursuant to his trial therein upon indictments theretofore returned into and filed in said Court charging this petitioner with the commission within the said district and division of penal offenses against the laws of the United States of America, and the said imprisonment, confinement and restraint are made and continued wholly upon the pretended and colorable warrant and authority aforesaid and none other.

(E) That said imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consist in those facts which have been heretofore recited in the petition above-mentioned, as well as the following facts.

(F) That said application for a writ of habeas corpus No. 23647-S filed on April 6, 1942, in which said application petitioner alleged he was illegally restrained of this liberty by James A. Johnston, Warden, United States Penitentiary, Alcatraz, California. That said application for a writ of habeas corpus set forth the cause of the petitioner's detention, summary of argument and argument supported by citations of law; that said application for a writ of habeas corpus was within the meaning of the United States Constitution, Article I, Section 9; that Article I, Section 9, to the Constitution of the United States refers to the writ of habeas corpus ad subjiciendum when a person stands committed in connection with a crime. (*Matter of Kaine*, 14 F. Cas. No. 7597.) [35]

Exhibit "C"—(Continued)

(G) That within the meaning of Article I, Section 9, to the Constitution of the United States, the writ of habeas corpus ad subjiciendum is a writ directed to the person detaining another, and commanding him to produce the body of the prisoner, (or person detained), with the day and cause of his caption and detention, ad faciendum, subjiciendum et recipiendum, to do, submit, to and receive whatsoever the judge or court awarding the writ shall consider in that behalf. 3 Bl. Comm. 131; 3 Steph. Comm. 695. This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement. 3 Bl. Comm. 129.

(H) That Congress has seen fit to enact into statute certain general rules governing the use and issue of the writ and the procedure thereunder. These are found in Title 28 of the United States Code, Judicial Code and Judiciary, sections 451-466.

(I) That in said application for a writ of habeas corpus No. 23647-S in the matter of Cecil Wright, petitioner, vs. James A. Johnston, Warden, United States Penitentiary, Alcatraz Island, on pages 10-11, paragraphs o, p, q, r, the statutes there cited 28 USCA Sections 451, 454, 455, 457, are hereby amended to read as follows:

(1) R. S. Sec. 751, 28 USC, Sec. 451, 28 USCA Sec. 451

Exhibit "C"—(Continued)

(2) R. S. Sec. 754, 28 USC, Sec. 454, 28 USCA Sec. 454

(3) R. S. Sec. 755, 28 USC, Sec. 455, 28 USCA Sec. 455

(4) R. S. Sec. 757, 28 USC, Sec. 457, 28 USCA Sec. 457; R. S. Sec. 758, 28 USC, Sec. 458, 28 USCA Sec. 458.

(5) R. S. Sec. 759, 28 USC, Sec. 459, 28 USCA Sec. 459

(6) R. S. Sec. 760, 28 USC, Sec. 460, 28 USCA Sec. 460

(7) R. S. Sec. 761, 28 USC, Sec. 461, 28 USCA Sec. 461

(J) That the above statutes of the United States declare that the Supreme Court and the District Courts shall have power to issue writs of habeas corpus; (1) that application [36] for the writ shall be made to the court or justice or judge authorized to issue the same by complaint in writing, under oath, signed by the petitioner, setting forth the facts concerning his detention, in whose custody he is and by virtue of what claim or authority, if known; (2) the court or justice or judge "shall forthwith award a writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto." The writ shall be directed to the person in whose custody the petitioner is detained; (3) the person to whom the writ is directed must certify to the court or judge the true cause of detention and, at the same time he makes his return,

Exhibit "C"—(Continued)

bring the body of the party before the judge who granted the writ; (4) when the writ is returned a day is to be set for the hearing, not exceeding five days thereafter, unless the petitioner requests a longer time; (5) the petitioner may deny the facts set forth in the return or may allege any other material facts, under oath; (6) the court or judge "shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require."

(K) Petitioner, citing *Walker v. Johnston*, 61, S. Ct. 574, in which the Supreme Court speaking through Mr. Justice Roberts said: "If an issue of fact is presented, the practice appears to have been to issue the writ, have the petitioner produced, and hold a hearing at which evidence is received. *Cundiff v. Nicholson*, 4 Cir., 107 F. (2d) 162; *Hurt v. Zerbst*, 5 Cir. 97 F. (2d) 519; *Brown v. Zerbst*, 5 Cir., 99 F. (2d) 745; *Mothershead v. King*, 8 Cir., 112 F. (2d) 1004; *Sanders v. Allen*, 69 App. D. C. 307, 100 F. (2d) 717; *Clawans v. Rives*, 70 App. D. C. 107, 104 F. (2d) 240, 122 A.L.R. 1436; *United States v. Hiatt*, D.C., 33 F. Supp. 545. This is, we think, the only admissible procedure. Nothing less will satisfy the command of the statute that the judge shall proceed "to de- [37] termine the facts of the case, by hearing the testimony and argument." It is not a question what the ancient practice was at common law or what the practice was

Exhibit "C"—(Continued)

prior to 1867 when the statute from which R. S. Section 761 is derived was adopted by Congress. The question is what the statute requires.

(I) Petitioner, citing *Johnson v. Zerbst*, 304 U. S. 458, 466, 58 S. Ct. 1019, 1024, 82 L. Ed. 1461, in which the Supreme Court speaking through Mr. Justice Black said: "Congress has expanded the rights of a petitioner for a writ of habeas corpus * * *. There being no doubt of the authority of the Congress to thus liberalize the common-law procedure on habeas corpus * * * it results that under the sections cited a prisoner in custody * * * may have a judicial inquiry * * * into the very truth and substance of the causes of his detention * * *." Such a judicial inquiry involves the reception of testimony, as the language of the statute shows.

(J) That an order to show cause is a convenient practice as stated by the Supreme Court in the case of *Walker v. Johnston*, *supra*, which deprives the petitioner of no substantial right, if the petition and traverse are treated, as we think they should be, as together constituting the application for the writ, and the return to the rule as setting up the facts thought to warrant its denial, and if issues of fact emerging from the pleadings are tried as required by the statute.

(K) That said application for a writ of habeas corpus No. 23647-S on file in the above-entitled and numbered cause along with exhibits "A" and "B"

Exhibit "C"—(Continued)

is sufficient on its face for the issuance of said writ; that the said order to show cause made and entered on April 6, 1942, commanding James A. Johnston, Warden aforesaid, to appear on April 27, 1942, and then and there to show cause, if any he has why a writ of habeas corpus should not issue as prayed for in the petition filed herein has been completely ignored by the Assistant United [38] States Attorney acting in behalf of the said respondent; that attached hereto marked exhibit "C" and made a part hereof as though fully set forth herein at length is a true and certified copy of order to show cause made and entered on April 6, 1942.

(L) That said habeas corpus No. 23647-S on file in the above-entitled court and in said application petitioner alleged that he was deprived of the right to have the undivided assistance of counsel is true and petitioner has the right to a hearing to sustain the burden of proof. That petitioner can sustain the burden of proof and an opportunity of this right is controlled by statute. 28 USCA Sections 451, 454, 455, 457, 461.

(M) Petitioner, citing *Walker v. Johnston*, *supra*, in which the Supreme Court speaking through Mr. Justice Roberts said: "Where petitioner sought writ of habeas corpus on ground that he had been deprived of constitutional right to assistance of counsel for his defense, question whether petitioner carried his burden of proof and showed his right to discharge was to be determined by the

Exhibit "C"—(Continued)

whole of the testimony and not by pleadings and affidavits. 28 USCA Sections 451, 454, 455, 457, 461; USCA Const. Amend. 6.

(N) That if petitioner sustains the burden of proof that he was deprived of the undivided assistance of counsel, then said petitioner is entitled to his discharge without prejudice to the right of the United States to take any lawful measure to have the petitioner sentenced in accordance with law upon the verdict against him; that petitioner presented to this court certified copies of the indictments, judgments and commitments in cases No. 11032 and 11074 and marked the same as exhibit "A" and "B".

(O) That the facts alleged in the said application H. C. No. 23647-S are true and supported by the trial court's own records; that nothing has been done to deny petitioner's [39] allegations and the application along with the exhibits attached thereto should be taken as confessed and petitioner discharged accordingly. Vide *In re Jennings*, C. C. Mo. 118 F. P. 479, 482.

(P) That the said application H. C. No. 23647-S on file in the above-entitled court together with this application constituting a writ of habeas corpus ad subjiciendum is sufficient for the issuance of said writ; that no return has been filed in and on behalf of said respondent and therefore petitioner is entitled to a hearing for the determination of his right to discharge by habeas corpus.

Exhibit "C"—(Continued)

Wherefore, your petitioner prays that a writ of habeas corpus ad subjiciendum may be granted, directed to the said James A. Johnston, Warden as aforesaid, commanding him to have the body of said Cecil Wright before your Honor at a time and place therein to be specified then and there to do and receive what your Honor shall order concerning said Cecil Wright, together with the time and cause of his detention, and that your petitioner may be restored to his liberty.

Respectfully submitted,
CECIL WRIGHT,
Petitioner

Dated: May 8, 1942.

(Verification.) [40]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE

On reading and filing the petition of Cecil Wright, and good cause appearing therefor,

It Is Hereby Ordered that James A. Johnston, Warden of the United States Penitentiary at Alcatraz Island, be and appear before this Court, at the Courtroom of A. F. St. Sure, Judge thereof, in the United States Post Office Building, 7th and Mission Streets, in the City and County of San

Exhibit "C"—(Continued)

Francisco, State of California, on the 27th day of April, 1942, at the hour of 10:00 A.M., and then and there show cause, if any he has, why a writ of habeas corpus should not issue as prayed for in the petition filed herein, and

It Is Further Ordered, that a copy of this order and a copy of the said petition for a writ of habeas corpus be served upon the said James A. Johnston not less than five (5) days prior to the date set for hearing thereof, and that the custody of the said Cecil Wright shall not be disturbed pending the final determination of the proceedings on said petition.

Dated: April 6, 1942.

A. F. ST. SURE

Judge of the United States

District Court [41]

APPENDIX No. 4

EXHIBIT "D"

RESPONDENT'S RETURN TO ORDER TO
SHOW CAUSE WITH CERTIFIED
COPIES OF COMMITMENTS IN CASES
NO. 11032 AND 11074, AND ECT. [42]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, through Frank J. Hennessy, United States Attorney for the Northern District of California, and for return to the Order to Show Cause heretofore issued herein, shows as follows:

I.

That the person hereinafter termed "the prisoner", on whose behalf the petition for writ of habeas corpus was filed, is detained by the respondent as Warden of the United States Penitentiary at Alcatraz Island, California, under and by virtue of the judgments and sentences duly issued by the District Court of the United States for the [43] Eastern District of Illinois in cases numbered 11032 and 11074 and transfer order issued in Washington, D. C. by Frank Loveland, Acting Assistant Director of the Bureau of Prisons of the Department of Justice on July 18, 1941;

II.

That this is the third petition for writ of habeas corpus filed by the prisoner, two previous petitions having been filed before this Court in cases numbered 23581-S and 23611-S, both of said petitions having been denied by the Court; that with the exception of the allegation in the petition that petitioner was denied his effective right to assistance of counsel, the questions raised in his present petition are the same as those raised in the two previous above-numbered petitions;

III.

That respondent is informed and believes that petitioner's right to assistance of counsel was not denied him at the time of his appearance before the District Court of the United States for the Eastern District of Illinois (the trial court), and that the prisoner was in fact represented by counsel at the time of his conviction and sentence;

IV.

That attached hereto and incorporated herein as part of this Return are copies of the following: Commitment in said Criminal Cause No. 11032; Commitment in said Criminal Cause No. 11074; Transfer Order issued as aforesaid, and Record of Court Commitment of the Department of Justice, Penal and Correctional Institutions, United States Peniten- [44] tiary, Alcatraz, California, in the case of Cecil Wright, No. 579-AZ.

Wherefore respondent prays that the petition for writ of habeas corpus be denied and that the order to show cause heretofore issued be discharged.

Dated: May 15, 1942.

FRANK J. HENNESSY,
United States Attorney. [45]

United States of America
Eastern District of Illinois

The President of the United States

To the Marshal of the Eastern District of Illinois—Greeting:

Whereas, at the September Term of the District Court of the United States for said Eastern District of Illinois, begun and held on the 1st day of September A. D. 1930, at the City of Danville, in said District, to wit:

On the 17th day of September A. D. 1930, Cecil Wright alias Tuck Wright indicted for Violation National Motor Vehicle Theft Act having plead guilty was sentenced to be imprisoned in the United States Penitentiary, at Leavenworth, Kans., for the period of five years, said sentence to run and be served consecutively with the sentence imposed in case No. 11032 in this court.

You are, therefore, commanded to take the said Cecil Wright alias Tuck Wright and him convey as soon as possible to the United States Penitentiary, at Leavenworth, Kans., there to be impris-

oned in pursuance of the said sentence, and to deliver to the Warden of said Penitentiary a duly certified copy of said sentence, under the seal of the said court.

Hereof Fail Not, and of this Writ and your doings thereon make due return.

Witness, The Honorable Walter C. Lidley, Judge of said Court, at Danville, in the District aforesaid, this 17th day of September, A. D. 1930.

(Signed) D. W. REED,
Clerk

District Court of United States
Eastern District Illinois

No. 11074

THE UNITED STATES

vs.

CECIL WRIGHT

I hereby certify that the within named Cecil Wright, alias Tuck Wright has been confined in the Illinois State Penitentiary from the date of sentence to October 31, 1939.

(Signed) WILLIAM RYAN,
U. S. Marshal

United States of America
Eastern District of Illinois—ss.

I have executed the within writ by transporting and delivering the within named defendant Cecil

Wright alias Tuck Wright to the Warden of United States Penitentiary, at Leavenworth, Kans., as I am herein commanded, this 1st day of November, A. D. 1939.

(Signed) WILLIAM RYAN,
U. S. Marshal

A True Copy:

W. F. DORINGTON
Record Clerk
USP., Alcatraz, Calif. [46]

United States of America
Eastern District of Illinois

The President of the United States

To the Marshal of the Eastern District of Illinois—Greeting:

Whereas, at the September Term of the District Court of the United States for said Eastern District of Illinois, begun and held on the 1st day of September, A. D. 1930, at the City of Danville, in said District, to wit:

On the 17th day of September, A. D. 1930, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright indicted for Violation of the Postal Laws having been found guilty were each sentenced to be imprisoned in the United States Penitentiary, at Leavenworth, Kans., for the period of ten years, from the date of the delivery of the said defendant to the Keeper or Warden of said Penitentiary, and to pay a fine to the United States in the sum of

\$10,000, said sentences to begin upon the expiration of the sentences which said defendants are now serving in the Southern Illinois Penitentiary.

You are, therefore, commanded to take the said Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright and them convey as soon as possible to the said United States Penitentiary, at Leavenworth, Kans., there to be imprisoned in pursuance of the said sentence, and to deliver to the Warden of said Penitentiary a duly certified copy of said sentence, under the seal of the said court.

Hereof Fail Not, and of this Writ and your doings thereon make due return.

Witness, The Honorable Walter C. Lindsey, Judge of said Court, at Danville, in the District aforesaid, this 17th day of September, A. D. 1930.

(Signed) D. W. REED,
Clerk

District Court of United States
Eastern District of Illinois

No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN AND TUCK WRIGHT.

I hereby certify that the within named Tuck Wright has been confined in the Southern Illinois

Penitentiary from date of sentence to October 31, 1939.

(Discharged from Illinois State Penitentiary, October 31, 1939)

(Signed) WILLIAM RYAN,
U. S. Marshal

United States of America
Eastern District of Illinois—ss.

I have executed the within writ by transporting and delivering the within-named defendant Carl Sanders & Joseph Hartman to the Warden of United States Penitentiary, at Leavenworth, Kans., as I am herein commanded, this 26 day of June, A. D. 1934.

ARTHUR M. BURKE,
U. S. Marshal
(Signed) HOWARD ROSS,
Deputy.

I have executed the within writ by transporting and delivering the within named Robert Raymond to the Warden of United States Penitentiary, at Leavenworth, Kansas, as I am herein commanded, this 13th day of November, A. D. 1934.

WILLIAM RYAN,
U. S. Marshal
By (Signed) JERRY BAXTER,
Deputy.

A True Copy

W. F. DORINGTON
Record Clerk,
USP., Alcatraz, Calif. [47]

Administrative Form No. 66

November 1938

Department of Justice

Washington

(Seal)

July 18, 1941

To the Warden, U. S. Penitentiary, Leavenworth,
Kansas

Whereas, in accordance with the authority contained in title 18, sections 744b and 753f, U. S. Code, the Attorney General by the Director of the Bureau of Prisons has ordered the transfer of Cecil Wright, #55980 from the U. S. Penitentiary, Leavenworth, Kansas to the U. S. Penitentiary, Alcatraz, California

Now Therefore, you, the above-named officer, are hereby authorized and directed to execute this order by causing the removal of said prisoner, together with the original writ of commitment and other official papers as above ordered and to incur the necessary expense and include it in your regular accounts.

And you, the warden, superintendent, or official in charge of the institution in which the prisoner is now confined, are hereby authorized to deliver the prisoner in accordance with the above order; and you, the warden, superintendent, or official in charge of the institution to which the transfer has been ordered, are hereby authorized and directed

to receive the said prisoner into your custody and him to safely keep until the expiration of his sentence or until he is otherwise discharged according to law.

By direction of the Attorney General

(Signed) FRANK LOVELAND,
Acting Assistant Director,
Bureau of Prisons.

Safer custody

A True Copy:

W. F. DORINGTON,
Record Clerk,
USP., Alcatraz, Calif.

Original.—To be left at institution to which prisoner is transferred. [48]

Record Form No. 1
(Revised Feb., 1936)

Original for Central File

RECORD OF COURT COMMITMENT

Department of Justice
Penal and Correctional Institutions
United States Penitentiary
Alcatraz, California

Inst. Name—Wright, Cecil. No.—579-AZ.

Alias—Tuck Wright. Date of Birth: 9-6-07.

Color—White. Age—34.

True Name—Inst. Name. Name and number of

prior commitments to Fed. Inst.—Same case & #55980—Leavenworth.

Offense—P. O. B. & E. Theft Consp., & Dyer Act.

District—Ed.—Illinois, Danville.

Sentence—15 Years. Fine—\$10,000.00. Committed—Yes.

Sentenced—September 17, 1930. When arrested—September 12, 1930.

Committed to Fed. Inst.—November 1, 1939. Where arrested—Pen. Menard Illinois.

Note: Sentence begins date of discharge from Illinois State Penitentiary, October 31, 1939. Residence—East Chicago, Indiana.

Eligible for Parole—October 30, 1944. Time in jail before trial—Since arrest.

Eligible for conditional release with good time—November 25, 1949. Rate per mo. good time—10. Total good time possible—1800 days plus.

Eligible for con. rel. with extra good time—~~Oct. 6, 1949~~—11-5-49. 50 days Ind. good time earned at USP., Leav.

Forfeited good time—October 17, 1941. Amount forfeited—30 days industrial G. T.

Expires full time—October 30, 1954.

Former Com. on Sentence to Other Institutions—No. 9492—15386—State Penitentiary, Menard, Illinois; No. 6485, State Penitentiary, Joliet, Illinois; No. 5751, State Reformatory, Pontiac, Illinois.

Persons to be notified in case of serious illness

or death: Name—Mrs. Dora Wright. Relation to prisoner—Mother. Address—7050 Osborne Street, East Chicago, Indiana. Telephone—.

Received at USP Alcatraz, July 23, 1941, by transfer from USP Leavenworth.

[Followed by form not filled in].

A True Copy.

W. F. DORINGTON,
Record Clerk. [49]

APPENDIX NO. 5

EXHIBIT "E"

PETITIONER'S TRAVERSE TO RETURN ON ORDER TO SHOW CAUSE [50]

[Title of District Court and Cause.]

TRAVERSE TO RETURN ON ORDER TO SHOW CAUSE

To: The Honorable A. F. St. Sure, United States District Judge, For The Northern District of California.

Now comes the petitioner, Cecil Wright, and by way of traverse and answers to the return heretofore filed by the respondent, represents as follows:

I.

That said petitioner re-alleges, reasserts and re-

Exhibit "E" (Continued)

affirms all the facts, matters and things set forth in his petition for a writ of habeas corpus.

II.

Petitioner, traversing respondent's return to order to show cause at page 2, paragraph 2, represents and shows:

(A) The fact that two previous petitions were filed is immaterial and has no effect on this case at bar.

(B) Petitioner, citing *Albori v. United States*, (C.C.A. Cal., 1933) 67 F. (2d) 4, in which the Circuit Court of Appeals for the Ninth Circuit held: "Res judicata does not apply in habeas corpus proceedings." In view of *Albori v. United States*, *Supra*, and in view of the fact that the case at bar is not identical with the two previous petitions, respondent's contentions that petitioner has raised questions in the present petition that were alleged in the two previous petitions is immaterial.

III.

Petitioner, traversing respondent's return to order to show cause at page [51] 2, paragraph 3, represents and shows:

(C) That petitioner's right to have the undivided assistance of counsel for his defense should have been respected. *Glasser v. United States*, *Supra*, 62 S. Ct. 457. The trial court denied the petitioner the right to employ counsel of his own choice

Exhibit "E" (Continued)

and over this petitioner's objections the trial court appointed counsel of its own choosing in the petitioner's aforesaid mentioned trial.

(D) The petitioner was on trial jointly with several other defendants which said defendants had prior to trial confessed and implicated this petitioner into their wrong-doings; this petitioner requested the undivided assistance of counsel for his defense and such a request was made by affidavit and filed in the trial court on the 17th day of September, 1930. This petitioner's interest was conflicting with that of his co-defendants and a cross-examination of the witnesses could not properly be conducted by the appointed counsel.

(E) Petitioner, citing *Glasser v. United States*, Supra, 62 S. Ct. 457, in which case the Supreme Court speaking through Mr. Justice Murphy, said: "The assistance of counsel guaranteed by the Sixth Amendment *contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests.*" "To preserve the protection of the Bill of Rights for hard-pressed defendants, every reasonable presumption against a waiver of fundamental rights is indulged. Though an accused may waive the right to the assistance of counsel, *whether there is a proper waiver should be clearly determined by the trial court. An accused's desire to have the benefit of the undivided assistance of counsel of his own choice should be respected. The right of an accused to have the as-*

Exhibit "E" (Continued)

sistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations concerning the amount of prejudice arising from its denial. The trial judge has the duty of *seeing that the trial is conducted with solicitude for the essential rights of the accused* and he should protect the right of an accused to have the assistance of counsel. *The guarantee of the Bill of Rights are the protecting bulwarks against the reach of arbitrary power, * * * deemed necessary to insure fundamental human rights of life and liberty.* And a federal court cannot constitutionally deprive an accused whose life or liberty is at stake of the assistance of counsel, Johnson v. Zerbst, 58 S. Ct. 1019; Powell v. Alabama, 53 S. Ct. 55: "To preserve * * * against the [52] waiver of fundamental rights, Aetna Insurance Co. v. Kennedy, 57 S. Ct. 809; Ohio Bell Telephone Co. v. Public Utilities Commission, 57 S. Ct. 724." (Italics added.)

(F) The petitioner asserts that this case at bar is identical with the case of Glasser v. United States, Supra. The case of Glasser v. United States, Supra, is direct controlling here in the petitioner's case.

(G) Petitioner, citing Walker v. Johnston, 61 S. Ct. 574, in which the Supreme Court held: "If the petition for writ of habeas corpus, the return, and traverse raise substantial issue of facts, it is petitioner's right to have these issues heard and determined in manner prescribed by statute." 28 U.S.C.A. Sections 451, et. seq.

(H) The fact that the respondent states that he

Exhibit "E" (Continued)

is informed and believes that petitioner's right to assistance of counsel was not denied him could not serve to deny the petitioner an opportunity to support his allegations by evidence. 28 U.S.C.A. Sections 451, et seq.

(I) Petitioner, citing *Walker v. Johnston*, *Supra*, in which the Supreme Court said: "The government contentions that petitioner's allegations were improbable and unbelievable could not serve to deny the petitioner an opportunity to support them by evidence." 28 U.S.C.A. Sections 451 et seq.

(J) The petitioner conceded in his petition for a writ of habeas corpus the fact that the trial court appointed counsel, but that said appointment was over the objections of this petitioner. That the trial court refused this petitioner an opportunity to employ counsel of his own choice and forced the petitioner to trial without proper defense counsel. That petitioner requested the trial court to allow him sufficient time to employ counsel and to prepare his case for trial. The trial court denied this petitioner's request and over this petitioner's objections the trial court appointed a colored attorney to represent this petitioner in his aforesaid mentioned trial. That the trial court forced upon the petitioner a trial that was unfair and unjust.

(K) Petitioner, citing *Powell v. Alabama*, *Supra*, in which the Supreme Court held: "*That the guaranteed right to the assistance of counsel includes a fair opportunity to an accused to secure counsel of his own choice and to have the effective*

Exhibit "E" (Continued)

and substantial aid of counsel, and also decides that the failure of a trial court to make an effective appointment of counsel is a denial of due process [53] within the meaning of the Fourteenth Amendment." For same effect as due process of law, *Vide U.S.C.A. Amend. 5.* (Italics added.)

(L) Petitioner, citing *Evans v. Rives*, 126 F. (2d) 633 (decided February 21, 1942), in which the court speaking through Mr. Justice Stephens, said: "The duty upon a court of according an accused constitutional right to assistance of counsel is positive and affirmative and must not be ignored. U.S. C.A. Const. Amend. 6. *"The Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel.* *Johnson v. Zerbst*, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461. *While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record.* (Italics added.) (304 U.S. at pages 462, 463, 58 S. Ct. at page 1022, 82 L. Ed. 1461.)

IV.

Petitioner, further traversing respondent's return to order to show cause at page 2, paragraph 4, represents and shows:

(M) The two commitments No. 11032 and No. 11074 attached to respondent's return and made a

Exhibit "E" (Continued)

part thereof were issued pursuant to the judgment and sentence entered upon the records of the trial court September 17, 1930. The petitioner refers this court to commitment No. 11032, and asks the court to observe the fact that the commitment has never been executed in so far as this petitioner is concerned. That the marshal has certified that the petitioner was confined in the Southern Illinois State Penitentiary from date of sentence to October 31, 1939. That commitment No. 11032 has not been executed against this petitioner by the marshal from the Eastern District of Illinois. The order of commitment No. 11032 commanded the marshal to take the petitioner and convey as soon as possible to the said United States Penitentiary, at Leavenworth, Kansas, there to be imprisoned in pursuance of the said sentence * * *. No mentioning was made that the petitioner was to be taken back to the state prison from where he came. That commitment No. 11032 has been reconstructed by the Clerk of the court to read in such a manner that would cover the marshal's failure to execute the mandate of the court. That the trial judge in pronouncing judgment and sentence did not mention that the [54] federal sentence would start upon the expiration of the sentence the petitioner was serving in the State Penitentiary. In fact, the trial judge was not aware that the petitioner was under service of a state sentence of not less than one year and no more than natural life. Had the trial judge been

Exhibit "E" (Continued)

familiar with petitioner's state sentence he would have no doubt deferred sentence in the federal court, or entered some specific provision that would not have been ambiguous and uncertain. The fact that the state sentence was for not less than one year and no more than natural life and in view of the fact petitioner was only paroled by State Board and subject to the State for the remaining of his natural life is sufficient to show that the state sentence has not been satisfied. The provisions inserted into the commitment and judgment is ambiguous and uncertain. That such provisions inserted by Clerk of Court are void, and even if entered upon the instructions of the trial judge the provisions would still be void for pronounced uncertainty.

(N) Petitioner, citing *Hill v. United States*, 298 U.S. 460, 56 S. Ct. 760, 80 L. Ed. 1283, in which the Supreme Court speaking through Mr. Justice Cardoza, held the commitment void, saying: "A Warrant of Commitment departing in matter of substance from the judgment back of it is void. *Boyd v. Archer* (C.C.A. 9th) 42 F. (2d) 43, 70 A.L.R. 1507; *Wagner v. United States* (C.C.A. 6th) 3 F. (2d) 864. Being void and not merely irregular, its nullity may be established upon a writ of habeas corpus. *People ex rel. Trainor v. Baker*, 89 N.Y. 460; *Boyd v. Archer*, *Supra*; *McNally v. Hill*, 293 U. S. 131, 79 L. Ed. 238, 55 S. Ct. 24. 'The prisoner is detained, not by virtue of the warrant of commitment, but on account of the judgment and

Exhibit "E" (Continued)

sentence.' *Riddle v. Shirley*, 16 F. (2d) 566; *Howard v. U.S.*, 75 F. 986, 989, 34 L.R.A. 509. If the judgment and sentence do not authorize his detention, no 'mittimus' will avail to make detention lawful. In *Hill v. United States*, *supra*, the following questions were certified to the Supreme Court for answer:

First, was the provisions inserted by the Clerk, (for nonpayment of fine) and always just orally understood by Clerk, (a) void? or (b) merely irregular?

Second, was the petition to District Court to correct the commitment, a final judgment until reversed by appropriate proceeding for review?

Third, will habeas corpus lie in one court to correct the commitment of another court where they were made certainly by the Clerk, but was not the sentence orally pronounced by the Court? Answer to questions:

First—The provisions by Clerk is void.

Second—No.

Third—Yes. [55]

(O) The petitioner was first in custody of the federal government and confined in the Vermilion County Jail under exclusive control of the United States marshal of the Eastern District of Illinois; that the federal government first took criminal jurisdiction over the petitioner under indictments returned at the May, 1930, term of court; that petitioner was arrested by the federal government and placed in the Vermilion County Jail and held there-

Exhibit "E" (Continued)

in from June 19, 1930, to July 23, 1930; that on request of the State Sheriff the United States marshal loaned the petitioner to the State Court for trial; that the State Court having returned an indictment at the July, 1930, term of court did not have exclusive control over the petitioner; that the marshal loaned the petitioner to the State Sheriff on July 23, 1930, for the purpose of being tried and not for the purpose of serving time in the State Prison; the State Court convicted the petitioner and immediately imprisoned the petitioner in the Southern Illinois State Penitentiary; that fifty-two (52) days after petitioner is confined in the State Prison, the marshal from the Eastern District of Illinois arrested petitioner a second time; that the State authorities loaned the petitioner back to the marshal and after the petitioner's conviction he was confined to the Vermilion County Jail until September 18, 1930; that petitioner was surrendered back to the State authorities for service of his State sentence of not less than one year and no more than natural life; that in 1935 while still under service of the State sentence petitioner wrote a letter to the trial judge seeking advice as to the proper proceedings necessary to set aside the federal sentence; the trial judge in reply stated: "I am only permitted to give advice to the Attorney-General and the President of the United States. I lost jurisdiction over your case at the expiration of the term of court in which you were convicted and especially after your sentence has begun. Your only remedy is

Exhibit "E" (Continued)

to apply to the President for executive clemency." On receiving the trial judge's letter petitioner immediately applied for executive clemency, but due to certain circumstances in the State Penitentiary petitioner did not complete his application.

(P) Petitioner, citing *Albori v. United States*, 67 F. (2d) 4, in which the Circuit Court of Appeals for the Ninth Circuit speaking through Mr. Sawtelle, Circuit Judge, said: "Federal Court, having first taken jurisdiction of Criminal case, was entitled, as against state court subsequently acquiring jurisdiction, [56] to have its sentence first executed."

(Q) The fact that the federal court first acquired jurisdiction over the person of the petitioner gave the federal court exclusive custody of petitioner and the right to have the federal sentence first executed; the federal marshal cannot loan the petitioner to a foreign sovereignty for the purpose of serving time; that the marshal could have loaned the petitioner for the purpose of a state trial, but the state could not imprison the petitioner in the State Penitentiary after conviction having only requested the petitioner's person temporarily.

(R) Petitioner, citing *Albori vs. United States*, *Supra*, in which the court said: "The federal court having first taken jurisdiction of the person of Albori, no doubt the United States had a lawful right to insist that the sentence imposed by its own court should be first executed." *Albori v. Sittel*, (C.C.A.) 44 F. (2d) 312, 313.

Exhibit "E" (Continued)

(S) The petitioner alleges that the State Parole Board released him on parole and that petitioner is still subject to the State of Illinois until discharged by the Department of Public Welfare; that petitioner was informed by the Board of Paroles that after his release from the federal Penitentiary it will be necessary for this petitioner to serve out his parole under the judgment of conviction by the State Court.

(T) The petitioner alleges if this court holds that the trial court could order the federal sentence to start upon the expiration of the state sentence, then it is necessary for this court to rule that the federal sentence has not as yet started; the fact that the petitioner was paroled and is still under the judgment of the state court will determine the question involved in respect as to when the federal sentence was to begin; it would seem that the sovereignty first acquiring exclusive control of the petitioner's person would retain its exclusively until the judgment is satisfied in full; since the jurisdiction of the petitioner's person first went to the federal government it was the petitioner's right to serve the federal sentence first; to hold otherwise would be establishing a law that a prisoner could be loaned to any state or federal prison for the purpose of serving time.

(U) Petitioner motions the court to strike from the respondent's return to order to show cause the following papers: (1) Record of Court Commitment taken from the [57] respondent's control file

Exhibit "E" (Continued)

jacket; (2) Commitment No. 11032 which has never been executed against this petitioner by the marshal of the Eastern District of Illinois.

Prayer

Wherefore, your petitioner respectfully prays that the writ of habeas corpus be issued and that your petitioner have such other and further relief or remedy in the premises as to the court may seem appropriate.

Dated: Alcatraz, California, May 22, 1942.

CECIL WRIGHT,

Petitioner, Per sec.

State of California

County of San Francisco—ss.

Cecil Wright, being first duly sworn, deposes and says: That he is the petitioner named in the foregoing traverse to return on order to show cause; that he has read said traverse and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to these matters he believes it to be true.

CECIL WRIGHT,

Affiant-Petitioner, Per sec.

Subscribed and sworn to before me this 22nd day of May, 1942.

[Seal] E. J. MILLER,

Associate Warden United States Penitentiary, Alcatraz, California.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths. [58]

APPENDIX No. 6

EXHIBIT "F"

RETURN TO WRIT OF HABEAS
CORPUS [59]

[Title of District Court and Cause.]

RETURN TO WRIT OF HABEAS CORPUS

Comes now James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, and for return to the writ of habeas corpus heretofore issued herein, shows as follows:

I.

That the person hereinafter termed "the prisoner", on whose behalf the petition for writ of habeas corpus was filed, is detained by the respondent as Warden of the United States Penitentiary at Alcatraz Island, California, under and by virtue of the judgments and sentences duly issued by the District Court of the United States for the Eastern District of Illinois in cases numbered 11032 and [60] 11074 and transfer order issued in Washington, D. C., by Frank Loveland, Acting Assistant Director of the Bureau of Prisons of the Department of Justice on July 18, 1941;

II.

That this is the third petition for writ of habeas corpus filed by the prisoner, two previous petitions having been filed before this Court in cases num-

bered 23581-S and 23611-S, both of said petitions having been denied by the Court; that with the exception of the allegation in the petition that petitioner was denied his effective right to assistance of counsel, the questions raised in his present petition are the same as those raised in the two previous above-numbered petitions;

III.

That respondent is informed and believes that petitioner's right to assistance of counsel was not denied him at the time of his appearance before the District Court of the United States for the Eastern District of Illinois (the trial court), and that the prisoner was in fact represented by counsel at the time of his conviction and sentence;

IV.

That the Return to Order to Show Cause heretofore filed herein is hereby referred to and incorporated herein as though set forth in full.

Wherefore respondent prays that the petition for writ of habeas corpus be denied and that the writ heretofore [61] issued be discharged.

Dated: May 28, 1942.

JAMES A. JOHNSTON,

Warden, United States Penitentiary, Alcatraz Island,
California. [62]

APPENDIX No. 7

EXHIBIT "G"

PETITIONER'S MOTION FOR WITH-
DRAWAL OF COUNSEL [63]

[Title of District Court and Cause.]

MOTION FOR WITHDRAWAL OF COUNSEL

To the Honorable A. F. St. Sure:

Now comes Cecil Wright, the petitioner in the above-entitled cause, and moves that the order of appointment of counsel made and entered on May 29, 1942, be vacated upon the following grounds:

1. That petitioner does not choose to have depositions taken in his behalf.

2. That petitioner requested the said appointment of counsel for the purpose of having depositions taken from the trial court, but decides that his testimony and certified copies of the trial court's records is sufficient to support his allegations that he was denied the effective assistance of counsel for his defense.

3. That petitioner will file a brief in support of point two and three, and the respondent's attorney may have the required time to present his reply brief.

Wherefore, petitioner prays that the order ap-

pointing counsel be vacated and that petitioner have leave to proceed in propria persona.

Respectfully submitted,

CECIL WRIGHT

Petitioner, Per. se.

Dated: June 20, 1942. [64]

APPENDIX No. 8

EXHIBIT "H"

PETITIONER'S MOTION FOR FURTHER
PROCEEDINGS [65]

[Title of District Court and Cause.]

MOTION FOR FURTHER PROCEEDINGS

To the Honorable A. F. St. Sure:

Now comes Cecil Wright, the petitioner in the above-entitled cause, and moves the above-named Court to issue an order for his appearance on June 26, 1942, for the reason of taking petitioner's testimony under oath.

That notice is hereby given that the counsel heretofore appointed cannot in any way waive any of petitioner's rights. That petitioner requests that he be arraigned in Court on June 26, 1942, for a hearing at which time petitioner will testify under oath.

Wherefore: petitioner prays that the above-named Court in pursuant to R. S. 757, 28 U.S.C.,

Sec. 457, 28 U.S.C.A., R.S. 758, 28 U.S.C., Sec. 458, 28 U.S.C.A. issue an order for petitioner's appearance as herein prayed for.

Respectfully submitted,

CECIL WRIGHT

Petitioner, Per se.

Dated: June 20, 1942. [66]

APPENDIX No. 9

EXHIBIT "I"

RESPONDENT'S REPLY BRIEF [67]

[Title of District Court and Cause.]

RESPONDENT'S REPLY BRIEF

The petitioner in his preliminary brief has raised two points which he claims are of sufficient magnitude to compel this Court to grant his release on habeas corpus. Briefly stated, these points are that inasmuch as he was originally in the custody of the State authorities, the Federal Court in Illinois had no jurisdiction to pass judgment upon him. As a corollary to that he argues that the United States Court did not have the power to impose a sentence upon him which would not commence to run until after he had served the sentence which was imposed by the State Court.

The other point raised by the petitioner is necessarily bound up in the first point. It is that he

earned 1800 days good time which should be applied to his Federal sentence. The answer to this is simple, the good time is claimed earned while the petitioner was incarcerated in the States penitentiary. Obviously a man cannot earn good time to be applied to a Federal sentence at a time when he is not serving that Federal sentence.

On the question of the jurisdiction and power of the Federal Court in Illinois, petitioner has argued at some length and has cited in his brief a number of authorities which he claims supports his contention that his Federal sentence is illegal and void. In citing these authorities the petitioner has avoided the citation of any case which deals directly with the situation in which he finds himself. The facts are that this petitioner was brought before the United States District Court for the Eastern District of Illinois at Danville, Illinois, by means of a writ of habeas corpus ad prosequendum, which was issued on August 29, 1930. He appeared in the United States District Court on September 16, 1930, at which time he entered a plea of not guilty and on that date Attorney J. D. Allen was appointed to defend him and his co-defendants. Petitioner was tried and found [68] guilty on September 17, 1930, and on that date was sentenced to serve a term of 10 years in the United States Penitentiary.

The judgment which was issued on September 17, 1930, states specifically, after a recital of the sentence:

“It is further ordered by the Court that the sentences herein imposed shall begin upon the

expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary.”

It is the contention of the petitioner that his sentence was indefinitely suspended and he cites numerous authorities which hold that where a sentence is indefinitely suspended the sentence is void. The authorities cited by the petitioner are unquestionably the law in the cases in which they were intended to apply, but it is not a fact that in his case the sentence was indefinitely suspended. It was to begin to run on the date that he was released from incarceration by the State authorities. The authorities are numerous that sentences of this type are valid. We respectfully refer the Court to the case of

Ex Parte Lamar. 274 Fed. 160

where the same point was decided by the Second Circuit, where the Court said:

“It is there clearly expressed that the Judge fixed the commencement of service after the expiration of Lamar’s term at Atlanta. No authority supports the claim that Judge Cushman was prohibited from fixing the date of the commencement of this term to such future date. To hold otherwise would be making a mockery of the law and to stultify the course of justice.”

We also find the same principle of law laid down in this Circuit, where Judge Gilbert expressed the rule as follows:

“In the present case the judgment, in providing that imprisonment should begin at the expiration of a sentence that precedes it, accords with the recognized practice, and it cannot be said to be void for uncertainty, ‘since it is as certain as the nature of the matter will permit’. 16 C. J. 1306, *Howard v. United States*, 75 F. 986.”

Austin v. United States, 19 Fed. (2d) 127 [69]

A more recent expression of the rule can be found in this Circuit in the case of *McNealy v. Johnston*. This case involves another petitioner from Alcatraz who raises the same point as here raised by this petitioner. In that case Judge Stephens in writing the opinion, quoted the sentence imposed upon *McNealy*, which read as follows:

“It is, therefore, Ordered and Adjudged by the Court that James McNeeley alias James McNealy be, and he is sentenced to imprisonment in the Atlanta Penitentiary for a period of Three (3) Years, the serving of said sentence to begin at the expiration of the sentence he is now serving for the Southern District of Florida.”

In commenting upon this sentence the Court used the following language:

“It has often been held by the Courts that when two or more sentences are imposed against the same person to imprisonment in the same institution, or the same type of institu-

tion, the presumption is that they are to be served concurrently rather than consecutively, unless the contrary clearly appears. Any reasonable doubt or ambiguity on that point is resolved in favor of the defendant. On the other hand, a judgment must be reasonably construed in accordance with the intent of the trial court, if the language discloses such intent clearly and without doubt or obscurity."

* * * * *

"We think there is no serious uncertainty in the language of the trial court, 'the serving of said sentence to begin at the expiration of the sentence he is now serving for the Southern District of Florida'. We therefore hold that the sentence imposed by the Alabama court is valid."

McNealy v. Johnston. 100 Fed. (2d) 280.

It will thus be seen that the authority of the Court to impose such a sentence as was imposed upon the petitioner is well supported in the law. The cases are numerous that a sentence of this type is valid. Those authorities which are cited by the petitioner are not in point because they apply only in cases where sentence was suspended without any date being set as to when the sentences should commence to run. The petitioner's contention to the effect that the District Court in Illinois had no jurisdiction to impose sentence upon him is clearly without merit. The fact is that he was [70] before the Court on a writ of habeas corpus ad prose-

quendum and the Court, having his body before it, had the power to impose sentence upon him.

Petitioner also contends that inasmuch as he claims he is still under sentence in the State Court for the balance of his natural life, that therefore his State sentence has not expired and he is being illegally restrained by the Federal authorities. This is a specious argument because the fact is as disclosed by the petitioner himself, that he was released from physical custody by the State on October 31, 1939. He was no longer under obligation to serve any time in a State penitentiary. Upon his release he was taken into custody by the Federal authorities and at that time entered upon his sentence in the Federal penitentiary. We can see no merit to this point of the petitioner's argument.

There are other points raised in the petition which, however, are to be the subject of a separate brief and these matters will be covered by a Memorandum to be filed after the testimony of various witnesses is taken in the State of Illinois.

Respectfully submitted,

FRANK J. HENNESSY

United States Attorney [71]

APPENDIX No. 10

EXHIBIT "J"

PETITIONER'S CLOSING BRIEF [72]

[Title of District Court and Cause.]

PETITIONER'S CLOSING BRIEF

The respondent has filed a reply brief and argues allegations that are irrelevant which do not support the issue at bar. The respondent's reply brief consists of irrelevant allegations and to avoid a conflict of allegations petitioner will cross each paragraph in the respondent's reply brief separately.

The respondent argues at page one, paragraph one, that the petitioner was originally in the custody of the state authorities. However, petitioner stated in his opening brief that the federal court first took criminal jurisdiction by indicting petitioner at the May, 1930, term of court and confined him to the Vermillion County Jail in exclusive custody of the United States Marshal.

Vide: Certified copies of federal indictments which are marked as petitioner's exhibit "A", filed June 5, 1930.

Vide: Letter from R. A. Merlie, Vermillion County jailer for reference to jail commitment which is marked as petitioner's exhibit "C".

Vide: Certified copy of state indictment No. 239 filed July 15, 1930, which is marked petitioner's exhibit "B".

The above exhibits should be scrutinized carefully by the Court as such exhibits clearly show which

Exhibit "J"—(Continued)

court between state and federal first acquired exclusive jurisdiction of petitioner's person. The respondent further states at page one, paragraph one, that the petitioner argued that the federal court did not have jurisdiction to pass judgment upon him, but petitioner's argument was to the [73] contrary and clearly expressed in his opening brief. Petitioner stated that if he was in exclusive custody of the state authorities then the federal court was without power to imprison him until he had satisfied the state judgment and sentence in full. Petitioner further stated in his opening brief that if he was in exclusive custody of the federal court then he was entitled to serve his sentence without delay.

The petitioner respectfully refers the court to petitioner's exhibit "D" which clearly shows that petitioner was paroled on October 31, 1939, and was not discharged as indicated by the respondent's records. That petitioner's opening brief covers the jurisdictional question involved, and although a burden it is necessary for petitioner to recite for the benefit of the respondent.

The respondent argues at pages one and two, paragraph two, that petitioner claims that he had earned 1800 days good time while incarcerated in the state prison, but petitioner's argument as to the good time was that if his federal sentence started when imposed he would be subject to good time allowance from the date of sentence.

Vide: *In re Jennings*, supra, 118 F. (C.C.) 479, 482.

Exhibit "J"—(Continued)

That respondent argues at page two, paragraph three, that petitioner avoided citation of any case which deals directly with the situation in which he finds himself. That petitioner was brought before the federal court on a writ of habeas corpus ad prosequendum, which was issued on August 29, 1930. To the respondent's claim petitioner respectfully calls to the Court's attention the fact that it would make no difference whatsoever as to what method the petitioner was produced in the federal court. The respondent claims that the authorities are numerous that sentences such as the petitioner's are valid but fails to cite any case to substantiate his allegations. The respondent has cited the following cases and claims that such cases are the law when applied against the petitioner's contentions that the trial court indefinitely suspended the execution and enforcement of the judgment after sentence was imposed.

Ex parte Lamar, 274 Fed. 160;

Austin v. United States, 19 F. (2d) 127;

McNealy v. Johnston, 100 F. (2d) 280.

The case of Ex parte Lamar, *supra*, holds if a sentence is vague and indefinite the terms will run concurrently. In the Lamar Case Judge Manton wrote an [74] opinion at considerable length which no doubt was to point out what constituted an indefinite suspension of the execution and enforcement of the judgment and sentence. Judge Cushman could fix a definite date for Lamar's sentence

Exhibit "J"—(Continued)

to start as the former sentence had a definite expiration date. But here in the petitioner's case Judge Lindley did not fix any date for the sentence to start as the date of October 31, 1939, was the date when the release was ordered by the Parole Board. It is certain that Judge Lindley did not know what date petitioner would be paroled and therefore could not fix the date when the sentence was to begin to run. It therefore must be conceded that the execution and enforcement of the judgment was indefinitely suspended after sentence was imposed. The case of *Ex parte Lamar*, *supra*, no doubt would be controlling as to petitioner's contentions that the sentence is vague and indefinite.

The next two cases in line *Austin v. United States*, *supra*; *McNealy v. Johnston*, *supra*, have no application as against petitioner's contentions that Judge Lindley failed to fix a definite date for the sentence to begin to run. In the *McNealy* case the sentencing Judge fixed the date when the sentence was to begin as the Florida sentence had a definite discharge date. The *Austin* case was of the same nature as *McNealy's* case, and therefore respondent has failed to show by what laws that Judge Lindley was empowered to indefinitely suspend the execution and enforcement of the judgment after sentence was imposed. Could Judge Lindley order the federal sentence to begin upon the expiration of the state sentence of not less than one year and no more than natural life?

"Thus a sentence to commence after the expira-

Exhibit "J"—(Continued)

tion of a 'former sentence' or 'sentence aforesaid', but containing nothing which shows to what these terms * * * relate, is void for uncertainty."—16 C. J. Sec. 3082, et seq. p. 1306-7, and cases insistent in all its terms, and not ambiguous." Ante. P. 1303; 19 Ency of Pl. and Pr. P. 746; authorities cited as the rule in *Biddle v. Hall*, 15 Fed. (2d) 840.

Petitioner, respectfully cites the rules laid down by the Supreme Court for the guidance of district Courts and their Clerks, as promulgated, as follows: (U. S. C. Title 28, Sec. 723a, Sec. 1-3); Vide *infra*:

"Insert sentences and * * * state whether they are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is with reference to the termination of the preceding term; or with respect to any other outstanding or [75] unserved sentence." District Court form No. 61, footnote 6-7-8; from S. Ct. "Rules of Practice and Procedure" after verdict, plea of guilty, in criminal cases in District Courts of the United States. Vide: *Fletcher v. United States*, (1937) 302 U. S. 218.

That in view of the three sentences imposed in Case No. 11032 without the order of sequence it could be argued as to which sentence would start first after petitioner's parole by state authorities; that under the rules cited *supra* it would seem that

Exhibit "J"—(Continued)

such rules would apply to the state sentence as well as several sentence imposed by the federal court; the fact that the state sentence was an outstanding and unserved sentence cannot be ignored in respect to the sequence of sentences imposed by different courts; that since the state sentence was an indefinite term and would not expire by lapse of time, the federal court could not enter provisions which would be indefinite; that it must be conceded in favor of the petitioner that the federal sentence in the absence of specific provisions started and ran concurrently with the state sentence and has escaped by lapse of time.

Petitioner, citing U. S. v. Daugherty, 299 U. S. 326, 70 L. Ed. 309, 46 S. Ct. 156, in which the Supreme Court said:

"The sentence should be couched in direct, clear, and unambiguous language, admitting of no uncertainty in any of its terms." (Italics Added.)

The petitioner argues that the above rule laid down by the Supreme Court in the Daugherty Case would, when applied to the case at bar, be direct controlling and any other holding would be to hold a federal court could impose a sentence to start at any time no matter how indefinite the terms might be. Here in the petitioner's case the indefiniteness of the state sentence is well established, and the provisions by the trial court are ambigu-

Exhibit "J"—(Continued)

ous and uncertain in respect as to the commencement of the federal sentence.

Petitioner, citing *In re Jennings*, (C.C.) 118 F. 479, 482, in which the Court said:

"Where an execution of sentence has not been stayed by an appeal, the term of imprisonment given by such sentence should be computed from the date of sentence, and it must be presumed in favor of the prisoner that he would have earned his allowance of time for good behavior given by this section, as it is not material that during a portion of the time during which the prisoner has been confined, he was held ostensibly for an offense other than [76] that for which he was originally convicted, since in the eye of the law, he has all the time been serving out the sentence that was imposed upon him." (*Italics Added*)

The petitioner did not stay his sentence by an appeal for the reason that he was under the impression that the federal and state sentences were running concurrently; that in view of the fact that the sentence was not stayed by an appeal, and in view of the marshal's exclusive custody and control of the petitioner, 'could the marshal's failure to execute the warrants of commitments be based on the provisions entered in the absence of the petitioner?'

Petitioner, citing *In re Jennings*, (C.C.) 118 F. 479, 482, in which Circuit Judge Thayer said:

Exhibit "J"—(Continued)

"The law contemplates that, after a prisoner has been tried and sentenced, he will be committed at once to the custody of the prison officials where the sentence is to be executed. He passes by virtue of the sentence into a custody different from that of the court before which he was convicted." (*Italics Added*)

The petitioner argues that when the Clerk of the Court issued the commitments in pursuant to the judgment and sentence of September 17, 1930, no mentioning was made by the order of the court that the sentence should start at a later date. The mandate of the court commanded the marshal to deliver the petitioner as soon as possible to the United States Penitentiary, Leavenworth, Kansas, there to be imprisoned in pursuant of the said sentence, and to deliver to the warden of said penitentiary a duly certified copy of said sentence, under the seal of the said court. Hereof Fail Not, and of this writ and your doings thereon make due return. The petitioner argues that after the marshal failed to obey the mandate of the court the Clerk entered provisions attempting to cover the marshal's failure to deliver the petitioner which altered the original instructions entered upon the records September 17, 1930. The petitioner argues that if such provisions had of been entered on the date of his sentence then it would have been unnecessary for the Clerk to issue a commitment to the marshal. But in petitioner's argument he points to the fact

Exhibit "J"—(Continued)

that the marshal's instructions were to execute the writ and his doings thereon make due return. The writ issued from under the hand and seal of the Clerk of the trial court on September 17, 1930, witnessed by the sentencing Judge, in the name of the President of the United States of America, commanding the marshal to execute the writ and make due return; that on October [77] 31, 1939, the marshal took petitioner into his custody at the Southern Illinois State Penitentiary, Menard, Illinois; that petitioner had been paroled under a one to life sentence and was at that date still under the judgment of the state court; that nine years one month and thirteen days elapsed before the marshal executed the commitment; this the petitioner argues was not the order of the writ as no mentioning was made that petitioner be returned to the state authorities after his sentence was imposed by the trial court; the marshal made his return on the writ nine years one month and thirteen days after sentence was imposed; this the petitioner argues was not the instructions of the court as shown in the writ; that if the marshal was ordered to make due return, 'could he make his return nine years one month and thirteen days later and be within requirements of the trial court's mandates?'

Petitioner, citing *Eyler v. Aderhold* (C.C.A. 5) 73 F. (2d) 372, 373, in which the Court said:

"(2-5) It has been the rule, in the absence of statute that if the commitment is silent as to

Exhibit "J"—(Continued)

the date the sentence shall begin to run, it will commence with the date of delivery to the designated jail. Prior to the adoption of the Act of Congress June 29, 1932, it was quite usual in sentencing a convicted person to impose the statutory penalty and give credit for such time as he had been confined in jail awaiting trial. This sometimes led to an arbitrary construction of the commitment by the jailer, which tended to deprive the prisoner of the credit intended to be given by the court. It also frequently happened that after sentence the prisoner would be detained in a local jail awaiting transportation to the penal institution in which he was to be confined for service of the sentence. Credit on the term could not be given for this imprisonment unless the commitment so provided. It is to be assumed that Congress intended to prevent situations such as these that might be detrimental to the rights of the prisoner as well as to make certain the date when a sentence legally began, something very necessary for the reasonable and proper application of the parole laws. Of course, a judge may take into consideration the time a person has remained in jail awaiting trial in imposing the sentence and if, through an unavoidable delay or the carelessness of the marshal, his delivery to a penitentiary or other penal instructions is postponed, his rights will not suffer." (*Italics Added*)

Exhibit "J"—(Continued)

Petitioner argues that no provisions were made for the date of October 31, 1939, and the commitments and judgments are both silent to the date that the sentence was to begin to run; that in no way can the parole date of October 31, 1939, [78] be considered as the date when the federal sentence was to begin; the petitioner further argues that the state parole board did not set the date of his release and only continued his state sentence until paroled on October 31, 1939. The only dates appearing in the judgments and commitments are of September 17, 1930.

Petitioner, citing *Ex parte Lyman*, 247 Fed. 611, in which the Court said:

"The time of one's sentence begins to run from the date he is received by the warden of the penitentiary, or from the time he is sentenced as shown by the date of such judgments." *Vide* IV Edition, *Atwell Fed. Cr. Law*, P. 174. (*Italics Added*)

The petitioner argues that in view of the above facts supported by the trial court's records together with the authorities of law it is clear that the sentence began on September 17, 1930, and has escaped by lapse of time; that any other holding would give a judge power to impose the punishment and enforce it in excess of what Congress intended for the prisoner to serve; that Congress passes the laws and fixes the maximum punishment and leaves it up to the discretion of the court

Exhibit "J"—(Continued)

to come within the limits; it is quite plain that Congress intended that the petitioner be punished within the scope of Sections 315, 313, 88 and 408 of title 18 of the Code of laws of the United States; that petitioner has been held under and by color of authority of the judgment and sentence of the United States District Court since September 17, 1930; that said sentence was entered and spread upon the minutes of the court September 17, 1930.

Petitioner, citing *Lunsford v. Hudspeth*, 126 F. (2d) 653, at page 655, Mr. Murrah, Circuit Judge, said:

"(1-2) Embedded in the question presented is an interplay between state and federal sovereignties in the exercise of the power of each to enforce and vindicate its laws. Out of the exercise of this power has evolved the new axiomatic rule of law that a sovereignty, or its courts, having possession of a person or property cannot be deprived of the right to deal with such person or property until its jurisdiction and remedy is exhausted, and no other sovereignty or its courts has the right or power to interfere with such custody or possession." *Ponzi v. Fessenden*, 258 U. S. 254, 42 S. Ct. 309, 66 L. Ed. 607, 22 A.L.R. 879; *Ex parte Johnson*, Petitioner, 167 U. S. 120, 17 S. Ct. 735, 42 L. Ed. 103; *Covell v. Heyman*, 111 U. S. 176, 4 S. Ct. 355, 28 L. Ed. 390; See *Toucey v. New York Life Ins. Co.*, 62 S. Ct. 139, rev.

Exhibit "J"—(Continued)

112 F. (2d) 927; rev. 115 F. (2d) 1, (*Italics added.*)

Petitioner argues that the federal government had exclusive jurisdiction and the right to retain such jurisdiction until the indictments were prosecuted [79] and the judgment and sentence satisfied thereunder. *Ponzi v. Fessenden*, *supra*. The Court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy, to attain which it assumed control, before the other court shall attempt to take it for its purpose. This superior right to retain the custody of a prisoner without interference is justified in this language: "It is a principle of right and of law, and therefore, of necessity. It leaves nothing to discretion or more convenience. Those courts (federal and state) do not belong to the same system, so far as their jurisdiction is concurrent. * * * When one sovereignty takes into its jurisdiction a specific thing, that res is as much withdrawn from the judicial power of the other, as if it had been carried physically into a different territorial sovereignty."

Petitioner, citing *Lunsford v. Hudspeth*, 126 F. (2d) 653, at page 659, Mr. Huxman, Circuit Judge dissenting, said:

"After imposing sentence, the journal entry of judgment provided that the prisoner be committed to the custody of the Attorney General for imprisonment on his federal sentence.

Exhibit "J"—(Continued)

When was he to be delivered to the Attorney General? At the conclusion of the state sentence? The answer is no. It was the Court's duty to fix not only the length of the sentence, but also the time when it began. A sentence by a federal judge may not be left suspended in midair. The judge could not impose a sentence to commence at some indefinite time in the future. *McPike and Zerbst, D.C., 21 F. Supp. 961*, * * * contemplates that the sentence begins to run from the time the marshal receives the commitment, which is the order to execute the sentence. And we should so hold unless there is something in the sentence or order of commitment, clearly indicating the contrary." In my view the principles announced in *McPike v. Zerbst, supra*; *Smith v. Swope, (C.C.A. 9) 91 F. (2d) 260*; *Albori v. United States, 67 F. (2d) 4*; are controlling, and should determine the question under consideration. For those reasons, I am forced to respectfully dissent." (*Italics added*)

Petitioner argues that in view of the United States exclusive jurisdiction over his person with the majority of decisions in petitioner's favor with direct controlling effect it would be petitioner's right to discharge by habeas corpus. The judgments and commitments of the trial court were entered and spread upon the minutes of the Court September 17, 1930; that even the provisions entered

Exhibit "J"—(Continued)

by Clerk of the Court are indefinite and even if the Clerk had acted with instructions from the trial judge in the absence of the petitioner the provisions would [80] be void for uncertainty; the judge of the trial court did not specify from the date of delivery to the penitentiary; the judgments and sentences that were entered into the Clerk's minutes September 17, 1930, have been rearranged to read differently than the original sentence imposed in the presence of the petitioner; the petitioner argues that in 1935 copies of the indictments, judgments and commitments were obtained from the trial court by one of petitioner's codefendants; that the commitments issued to petitioner's codefendants read differently than the commitments issued to this petitioner; that upon passing of judgment and sentence on September 17, 1930, the petitioner along with his codefendants were arraigned and received sentence at the same time; that the judge in imposing sentence said: " * * * Each be imprisoned in the United States Penitentiary at Leavenworth, Kansas * * *." The petitioner argues that the trial judge imposed a joint judgment and the Clerk's minutes should now read otherwise; whether or not such a joint judgment and sentence is legal is not contested and merely illustrated to show that under the joint judgment the records of each prisoner involved would read the same; that the Clerk of the Court did alter such records and could have as easily

Exhibit "J"—(Continued)

altered his short book to read the same as the records which he had reconstructed. That rule (1) of the Rules of the Supreme Court in Criminal Cases was amended May 24th, 1937, by the addition of this sentence: "The judgment setting forth the sentence shall be signed by the judge who imposes the sentence and shall be entered by the Clerk." Prior to the order of the Supreme Court making this amendment, the sentence as pronounced by the Court was entered by the Clerk in his minutes, and from them the docket entry with respect to the judgment was made, and some confusion arose from this practice, as shown by the following statement of the prior law by the Supreme Court:

"The only sentence known to the law is the sentence or judgment entered upon the records of the Court. *Miller v. Aderhold*, 288 U.S. 206, 210, 77 L. ed. 702, 705, 53 S. Ct. 325; *Wagner v. United States* (C.C.A. 9th) 3 F. (2d) 864; and *Manke v. People*, 74 N.Y. 415, 424. If the entry is inaccurate, there is a remedy by motion to correct it to the end that it may speak the truth. *People ex rel. Trainor v. Baker*, 89 N.Y. 460, 466. But the judgment imports verity when collaterally assailed. *Ibid.* Until corrected in a direct proceeding, it says what it was meant to say, and this by an irrebutable presumption. In any collateral inquiry, a court will close its ears to a suggestion that the sentence entered in the minutes is something other than the authentic expression of the sentence

Exhibit "J"—(Continued)

of the judge." (Hill v. U. S., 298 U.S. 460, [81] 464, 80 L. ed. 1283, 56 S. Ct. 760.) (Italics added)

Petitioner argues that nine years one month and thirteen days elapsed before he became familiar with the fact that the Clerk of the Court had reconstructed the judgments and commitments that were issued on September 17, 1930; that for nine years one month and thirteen days after petitioner was sentenced he was lead to believe that his federal sentence was running concurrently with his state sentence; that after petitioner was granted a parole by the state parole board he finds that the Clerk of the Court has inserted provisions to cover the marshal's failure to comply with the commitments; that petitioner immediately moved the trial court to set aside the judgment and sentence and to correct the provisions entered into the commitment by the Clerk; the trial judge merely said he was without jurisdiction to correct the judgment and sentence of September 17, 1930, after it had begun to run. As said in the above statement by the Supreme Court the judgment imports verity when collaterally assailed; the judgments in cases No. 11032 and 11074 clearly show that the sentence was imposed on September 17, 1930; the petitioner argues in view of the above cited cases the trial court could not suspend the execution of the sentence indefinitely no matter who entered the provisons; that the sentence of the court was to be imprisoned in

Exhibit "J"—(Continued)

the Leavenworth Penitentiary for terms totaling fifteen years; that if the sentence began to run on September 17, 1930, in view of the authorities of law above cited, then the sentence of September 17, 1930, has escaped by lapse of time; that it was mandatory to discharge the petitioner after he served ten years one month and twenty-five days from date of sentence less deduction of eighteen hundred (1800) days statutory good time; that 18 U.S.C. Sec. 713 provided that a prisoner be discharged after service of his sentence less deduction of good time for good behavior; that the Act of Congress June 19th, 1902, section (1) provided for a sentence of ten (10) years or more, ten (10) days each month shall be deducted for good behavior; the petitioner argues that it is not material that during a portion of the time during which he was confined, he was held ostensibly for an offense other than that for which he was originally convicted, since in the eye of the law, he has all the time been serving out the sentence that was imposed upon him. Vide: *In re Jennings*, supra, 118 F. (C.C.) 479, 482.

Petitioner, citing *White v. Pearlman*, 42 F. (2d) 70, 194, in which the Court said: [82]

"A prisoner has some rights. A sentence means a continuous sentence unless interrupted by escape, violation of parole, or some fault of the prisoner, and he cannot be made to serve it in installments."

Exhibit "J"—(Continued)

Petitioner argues that the federal sentence was not interrupted by any fault of his; that the conflict of the state and federal sentence was caused by the voluntary acts of the United States Marshal; that had the United States Marshal held petitioner until he was tried, convicted and sentenced it would not have deprived the state authorities of a prosecution of the state indictment and would have prevented a conflict of the state and federal sentences.

The respondent claims that petitioner was taken from the state prison by a writ of habeas corpus ad prosequendum. The respondent's attorney has furnished petitioner with a certified copy of the trial court's transcript which is incomplete and the order for the writ of habeas corpus ad prosequendum is not a part of said trial court's records.

The means afforded for the production of the petitioner lies in the power of the federal court to issue a writ of habeas corpus ad prosequendum, in accordance with Sec. 453, 28 U.S.C.A., which authorizes the issuance of a writ of habeas corpus when necessary to bring a prisoner into court to testify. There is, however, no magic in the Latin phrase "ad prosequendum" when used in connection with a writ of habeas corpus. It is merely a product of the common law, which comes to us in forms of pleadings and practice. *Ex parte Bollman*, 4 Cranch 75, 8 U. S. 75, 98, 2 L. Ed. 554. The use of the phrase "ad prosequendum" confers no power

Exhibit "J"—(Continued)

not granted by the Constitution and laws of the United States.

The petitioner states that he does not believe that a writ of habeas corpus ad prosequendum was used for the purpose of his conveyance from the State Prison to the federal court as he was in the exclusive custody of a United States Deputy Marshal from the time he was taken from the state prison until he was returned to the state prison after his trial in the federal court. However, there may have been a writ of habeas corpus issued and if this were true as respondent claims, 'where is the order of the writ of habeas corpus ad prosequendum?' The respondent fails to find such an order and so does the petitioner; although the docket entries indicate that a writ of habeas corpus ad prosequendum was issued on the 29th day of August, 1930, there is no such order at the present to substantiate respondent's allegations. The petitioner states if such an order was [83] present it would make no difference as the jurisdiction of petitioner's person first went to the federal court as clearly shown by petitioner's exhibits.

The petitioner has written at considerable length to point out the question of the federal court's exclusive jurisdiction, and motions the court to quash respondent's reply brief for the reason that it raises irrelevant allegations.

Respectfully submitted,

CECIL WRIGHT

Petitioner, Per se.

Exhibit "J"—(Continued)

State of California

County of San Francisco—ss.

Cecil Wright, being duly sworn, deposes and says: That he is the petitioner in the above-entitled action; that he has read the foregoing brief and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to these matters he believes it to be true.

CECIL WRIGHT

Affiant-Petitioner.

Subscribed and sworn to before me this 8 day of August, 1942.

E. J. MILLER,

Associate Warden

United States Penitentiary,

Alcatraz, California.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths.

[84]

APPENDIX No. 11

EXHIBIT "K"

PETITIONER'S AFFIDAVIT TO THE TRIAL
COURT MADE TWENTY-FOUR HOURS
AFTER SAID ARRAIGNMENT AND AP-
POINTMENT OF COUNSEL. [85]

In the District Court of the United States of
America for the Eastern District of Illinois
September Term A.D. 1930

No.

THE UNITED STATES OF AMERICA

vs.

TUCK WRIGHT, ROBERT RAYMOND, CARL
SANDERS MONTE CRIST, AND JOSEPH
HARTMAN.

Tuck Wright, one of the above named defendant, makes oath and says that he cannot safely proceed to trial of this cause at the present term of this court on account of the absence of one Glen Rommel and one Mary Rommel both of whom are material witnesses for the defendant in said cause, and whose residence is 713 South Oakland Court, Decatur, Illinois. That this affiant expects to prove by said witnesses, Glen Rommel, and Mary Rommel, the following matters, all of which are material to the issues involved in said cause: to-wit: That this

affiant was not in Strasburg, Illinois, on the 9th day of April, 1930, when the Post Office of the United States at said place was burglarized; that this affiant was severely injured and was in the City of Decatur under the care of one Dr. McGill, and was not at or near the scene of the supposed crime; that all the matters and things which the defendant expects to prove by the said Glen Rommel and Mary Rommel, are true.

And this affiant further says that he tried to communicate with the said Glen Rommel and Mary Rommel by writing to them letters out of the Southern Illinois Penitentiary but was prevented from doing so by the rules of said institution which forbid inmates to write more frequently than one in two weeks. This affiant further says that he is informed and believes that the issues involved in this cause will be controverted, and that the evidence relating to such issues will be highly conflicting, as introduced by the respective parties, and that he knows of no other person or persons than the said [86] Glen Rommel and Mary Rommel by whom he can so fully prove the above matters set forth, And this affiant further says that he expects to and believes that he will be able to procure the attendance and testimony of the said Glen Rommel and Mary Rommel at the next term of this Court.

And this affiant further says that the said Glen Rommel and Mary Rommel are not absent by the procurement, connivance or consent of this affiant, either directly or indirectly, and that this applica-

tion is not made for delay, but that justice may be done.

[Signed] CECIL WRIGHT

Affiant.

Subscribed and sworn to before me this 17 day of September A.D. 1930.

[Signed] D. H. REED

Clerk of the United States
District Court. [87]

APPENDIX No. 12

EXHIBIT "L"

TRIAL COURT'S ORDER APPOINTING
COUNSEL IN CASE No. 11032 [88]

In the District Court of the United States for the
Eastern District of Illinois
Tuesday, September 16, 1930

Present: Honorable Walter C. Lindley, Judge.
No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOS-
EPH HARTMAN AND TUCK WRIGHT

INDICTMENT
VIOLATION POSTAL LAWS

And Now on this 16th day of September, A.D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney

for the Eastern District of Illinois, and comes also the defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright each in person. And the said defendants being arraigned on the indictment herein for plea thereto, each says that he is not guilty as therein charged; and now it appearing to the court that the said defendants are without legal counsel to defend them and are unable to secure such counsel, it is ordered by the Court that J. D. Allen, an attorney and counsellor of this court, be and he is hereby appointed to defend the said Robert Raymond, Carl Sanders, Joseph Hartman, and Tuck Wright. [89]

* * * * *

APPENDIX No. 13

EXHIBIT "M"

ORDER DENYING PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS. [90]

In the Southern Division of the United States
District Court for the Northern District
of California

No. 23647-S

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Respondent.

ORDER

After hearing upon a writ of habeas corpus heretofore issued on May 27, 1942, and upon due consideration of the testimony and arguments submitted to the Court for decision, It Is Hereby Ordered:

1. The application of petitioner to be restored to his liberty is denied;
2. The writ heretofore issued on May 27, 1942, is discharged.

The United States Attorney may submit findings of fact and conclusions of law under the rules.

Dated: August 20, 1942.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Aug. 20, 1942. [91]

APPENDIX No. 14

EXHIBIT "N"

CERTIFIED COPY OF THE INDICTMENT,
JUDGMENT, COMMITMENT AND MAR-
SHAL'S RETURN.

Note:—The same Counsel was appointed to represent the two defendants in this case No. 11074, as in the case No. 11032. [92]

In the District Court of the United States of
America for the Eastern District of Illinois

May Term, A.D. 1930

Eastern District of Illinois—ss.

The Grand Jurors for the United States of
America empaneled and sworn in the District Court
of the United States of America, for the Eastern
District of Illinois, at the May Term of said court
in the year A.D. 1930, and inquiring for said dis-
trict upon their oaths present: that

Monte Crist,
Cecil Wright, and
Marion Bowles,

hereinafter called the defendants, on or about the
19th day of April, A.D. 1930, did unlawfully, know-
ingly and feloniously transport and cause to be
transported in interstate commerce one certain
Ford Sedan Motor vehicle, then and there bearing
motor number A-2087965, from at or near Loving-
ton, in the County of Multrie, in the State of
Illinois, in the Eastern District of Illinois, and
within the jurisdiction of said court, to East Chi-
cago, in the State of Indiana, which said motor
vehicle had theretofore been stolen at Lovington, in
the state of Illinois, the said defendants then and
there well knowing the same to have been stolen:

Against the peace and dignity of the United
States of America and contrary to the form of the
statute of the same in such case made and pro-
vided.

[Signed]

HAROLD G. BAKER

United States Attorney [93]

In the District Court of the United States for the
Eastern District of Illinois

Wednesday, September 17, 1930

Present: Honorable Walter C. Lindley, Judge.

No. 11074

THE UNITED STATES

vs.

MONTE CRIST, CECIL WRIGHT alias TUCK
WRIGHT and MARION BOWLES

INDICTMENT

VIOLATION NATIONAL MOTOR VEHICLE
THEFT ACT

1 Count, Transportation

And Now on this 17th day of September, A.D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants Cecil Wright alias Tuck Wright and Marion Bowles, each in person, and by J. D. Allen, their attorney. And now comes the defendant, Cecil Wright alias Tuck Wright, and by leave of court withdraws his plea of not guilty heretofore entered herein, and instead thereof says that he is guilty in manner and form as charged in the indictment. And now issues being joined as to the defendant, Marion Bowles, and jury being waived,

his case comes on for hearing before the Court, and after hearing the evidence in the case and the arguments of counsel and being fully advised in the premises, the court finds the defendant Marion Bowles guilty in manner and form as charged in the indictment. And now the said defendants, Cecil Wright alias Tuck Wright and Marion Bowles being before the court for sentence and they having nothing to say why sentence should not be pronounced against them—It is, therefore, considered and adjudged by the Court, that the said defendants Cecil Wright alias Tuck Wright, for the offense by him committed in manner and form as charged in the indictment, and as by him confessed, be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years, said sentence to run and be served consecutively with the sentence imposed against the said defendant in case No. 11032, and that said defendant be committed to said Penitentiary pursuant to said sentence. And it is considered and adjudged by the Court that the defendant, Marion Bowles, for the offense by him committed, in manner and form as charged in the indictment and as found by the court, be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years from the date of the delivery of the said defendant to the Keeper or Warden of the said Penitentiary, said sentence to begin upon the expiration of the sentence which the said defendant is now serving in the Southern Illinois Penitenti-

ary, and that the said defendant be committed to the United States Penitentiary pursuant to said sentence. [95]

[Endorsed]:

United States of America
Eastern District of Illinois—ss.

I, D. H. Reed Clerk of the District Court of the United States for the Eastern District of Illinois, do hereby certify the foregoing to be a true copy of an order made and entered in said Court on the 17th day of September, A.D. 1930, as fully as the same appears upon the records now in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Danville, in the District aforesaid, this 17th day of September, A.D. 1930.

(Signed) D. H. REED

[Seal] Clerk

I hereby certify that I have executed the within writ by transporting and delivering the within named Tuck Wright to the U. S. Penitentiary at Leavenworth, Kas., the 1st day of November, A.D. 1939.

(Signed) WILLIAM RYAN

U. S. Marshal

#17848

No. 11074

United States District Court, Eastern District of
Illinois

THE UNITED STATES

vs.

MONTE CRIST, CECIL WRIGHT, alias TUCK
WRIGHT and MARION BOWLES

CERTIFIED COPY OF SENTENCE

[Endorsed]: Filed Nov. 7, 1939. D. H. Reed,
Clerk.

5 years U. S. Pen at Leavenworth, Kansas, to
run and be served consecutively with sentence in
Criminal Case No. 11032. [96]

District Court of the United States of America,
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the
United States for the Eastern District of Illinois,
and keeper of the records and seals thereof, do
hereby certify the foregoing to be a true copy of
Indictment; Judgment and Sentence, with Mar-
shal's return thereon, in the matter of United
States of America vs. Cecil Wright, et al, Criminal
No. 11074, as fully as the same appears from the

originals now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 14th day of November, A.D. 1941.

[Seal]

D. H. REED

Clerk [97]

APPENDIX No. 15

EXHIBIT "O"

CERTIFIED COPY OF THE INDICTMENT,
JUDGMENT, COMMITMENT AND THE
MARSHAL'S RETURN IN CASE No. 11032.
[98]

In the District Court of the United States of
America for the Eastern District of Illinois

May Term, A.D. 1930

Eastern District of Illinois—ss.

The Grand Jurors for the United States of
America empaneled and sworn in the District Court
of the United States of America, for the Eastern
District of Illinois, at the May Term of said court
in the year 1930 and inquiring for said district upon
their oaths present: that

Robert Raymond

Carl Sanders

Joseph Hartman

Monte Crist and

Tuck Wright, whose true Christian name

is to the Grand Jurors unknown,

hereinafter called the defendants on, to-wit, the 9th day of April, A.D. 1930, at Strasburg, in the County of Shelby, in the State of Illinois, in the Eastern District of Illinois and within the jurisdiction of said court, did then and there unlawfully, forcibly and feloniously break into a certain building used as a Postoffice of the United States at Strasburg, Illinois, with the intent then and there in them, the said defendants, to commit larceny in said building so used as a Postoffice of the United States.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed)

HAROLD G. BAKER

United States Attorney [99]

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that

Robert Raymond

Carl Sanders

Joseph Hartman

Monte Crist and

Tuck Wright, whose true Christian name

is to the Grand Jurors unknown,

hereinafter called the defendants on, to-wit, the 9th

day of April, A.D. 1930, at Strasburg, in the County of Shelby, in the State of Illinois, in the Eastern District of Illinois and within the jurisdiction of said court did, then and there unlawfully and feloniously steal, take and carry away from a certain building occupied by the Postoffice Department of the United States at Strasburg, Illinois, certain personal property belonging to the United States to-wit, \$2.43, a more particular description of which said personal property is to the Grand Jurors unknown, with the intent then and there in them, the said defendants, to convert said personal property to their own use.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed)

HAROLD G. BAKER

United States Attorney [100]

THIRD COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that

Robert Raymond

Carl Sanders

Joseph Hartman

Monte Crist and

Tuck Wright, whose true Christian name
is to the Grand Jurors unknown,

hereinafter called the defendants did, on or about the 1st day of April, A. D. 1930 and thence continuously throughout the period of time from that

date to the date of the return and filing of this indictment, in the State of Illinois and within the Eastern District of Illinois aforesaid, did unlawfully, wilfully, knowingly and feloniously conspire, combine, confederate and agree together, each with the other, to, during said period of time, in said state and district to violate Sections 313 and 315 of the United States Code, that is to say that they so conspired, confederated and combined and agreed together, each with the other, to unlawfully break into and enter a certain Postoffice of the United States at Strasburg, Illinois, and to steal, take and carry away from said Postoffice certain personal property then and there belonging to the United States. And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that in the furtherance of and in the pursuance of and in the execution of and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation and agreement the following overt acts were committed within the jurisdiction of said court:

1. That on or about April 9, A.D. 1930 the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did assault one William M. Wilson at Strasburg, Illinois. [101]

2. That on or about April 9, A.D. 1930, the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did break and enter the Post Office of the United States at Strasburg, Illinois.

3. That on or about April 9, A.D. 1930, the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did steal, take and carry away \$2.43 from the Postoffice of the United States at Strasburg, Illinois.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER
United States Attorney

No. 11,032—United States District Court,
Eastern District of Illinois

The United States vs. Robert Raymond, et al.
Indictment for Violation of the Postal Laws.
A True Bill.

(Signed) A. H. FAVREAU
Foreman Grand Jury

[Endorsed]: Filed Jun. 5, 1930. Douglas H. Reed, U. S. Court Clerk.

(Signed) HAROLD G. BAKER
U. S. Attorney

\$10,000. [102]

In the District Court of the United States
For the Eastern District of Illinois

Wednesday, September 17, 1930

Present: Honorable Walter C. Lindley,
Judge.

No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JO-
SEPH HARTMAN AND TUCK WRIGHT

INDICTMENT VIOLATION OF
POSTAL LAWS

1st—Breaking into Post Office
2nd—Stealing Govt. Property
3rd—Conspiracy.

And now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, each in person, and by J. D. Allen, their attorney. And now comes the defendant Tuck Wright, by his said attorney, and enters motion for a continuance, which said motion is by the court denied, and now comes the said defendant and enters motion for a separate

trial, which said motion is by the court denied, and issue being joined, the following named jurors are tendered and accepted to wit: Stephen Gannon, H. R. Boeschen, G. W. Gilliland, Oscar Forth, D. C. Burrow, Sam Wilson, Harry Beard, Mark Wiseman, William Basinger, Charles Tilton, Dan Fritz and J. W. Snider, who are duly sworn to well and truly try the issue joined in this case and a true verdict render according to law and evidence. And after hearing the evidence in the case, the arguments of counsel, and the instructions of the Court, the jury retire to consider their verdict, and afterward come into Court and for verdict says: "We, the jury find the defendants, Carl Sanders, Tuck Wright, Joe Hartman and Robert Raymond guilty in manner and form as charged in the indictment." And the said defendants being arraigned at the bar of the court for sentence and they having nothing further to say why sentence should not be [103] pronounced against them, it is, therefore considered and adjudged by the Court that the said defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, for the offense by them committed in manner and form as charged in the said indictment and as found by the jury in this case each be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years on the 1st count of the indictment, three years on the 2nd count and two years on the 3rd count, from the date of delivery of the said defendants to the Keeper or Warden of the said Peni-

tentiary said sentences to run and be served consecutively; that they each pay a fine to the United States in the sum of Ten Thousand Dollars, that execution issue therefor and that the said defendants stand committed to the said Penitentiary until said fines shall have been fully paid.

It is further ordered by the Court that the sentences herein imposed shall begin upon the expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary.

United States of America

Eastern District of Illinois—ss.

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois do hereby certify the foregoing to be a true copy of an order made and entered in said Court on the 17th day of September, A. D. 1930, as fully as the same appears upon the records now in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Danville, in the District aforesaid, this 17th day of September, A. D. 1930.

[Seal] (Signed) D. H. REED

Clerk [104]

I hereby certify that I have executed the within Writ as to Tuck Wright by transporting and delivering him to the U. S. Penitentiary at Leavenworth, Kas. this 1st day of November, A. D. 1939.

(Signed) WILLIAM RYAN

U. S. Marshal

No. 11032

#22413

United States District Court
Eastern District of Illinois

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JO-
SEPH HARTMAN AND TUCK WRIGHT

CERTIFIED COPY OF SENTENCE

[Endorsed]: Filed Nov. 7, 1939. D. H. Reed,
Clerk.

10 years U. S. Pen at Lenvenworth, Kansas;
and to pay a fine of \$10,000.00; stand committed.

[105]

APPENDIX No. 16

EXHIBIT "R"

ORIGINAL LETTER FROM THE STATE
PAROLE BOARD [106]

Members of the Division

W. C. Jones, Superintendent

Frank D. Whipp

Milton H. Summers

William J. Smith, Jr.

Paul L. Schroeder, M.D.
Roy G. Barrick, M.D.
James G. Gullett,
Assistant Superintendent
George W. Schwaner, Jr.
Secretary
Robert B. Phillips,
Chief Clerk

State of Illinois

Dwight H. Green, Governor
Department of Public Safety
T. P. Sullivan, Director

DIVISION OF CORRECTION
Springfield

August 24, 1942.

Subject: Cecil Wright, No. 15386—Menard

Mr. Cecil Wright
Box No. PMB 579
Alcatraz, California

Dear Sir:

Your letter of August 20, 1942, has been received.

As I advised you in my letter of October 30, 1941, to which you are referred, which was written in reply to your letter of October 21, 1941, whenever you are released from Alcatraz, you will be required to do an Illinois parole, and I suggested you communicate with the Parole Officer at the

Menard Division of the Illinois State Penitentiary.

You ask for the necessary parole reports for the first year, including the arrival slip, and you ask for the name of the Parole Officer for Coles County, as you state you intend to live in Mattoon, Illinois, and work in the Brown Shoe Factory, where your brother is a foreman.

I am today sending your letter for attention to Mr. J. L. Lawder, Parole Officer, Menard Division, Illinois State Penitentiary, Menard, Illinois.

I do not know whether or not Mr. Lawder has been advised by the Alcatraz authorities of your pending release date, but it is noted you state you are expecting it soon. Mr. Lawder will be requested to take care of this matter.

Yours very truly,

ROBERT B. PHILLIPS

R. B. Phillips,
Chief Clerk.

RBP:KW

CC: Mr. Lawder, Menard

Mr. Summers, Springfield. [107]

APPENDIX No. 17

EXHIBIT S

ORIGINAL LETTER FROM THE ILLINOIS
STATE PAROLE OFFICER [108]

STATE OF ILLINOIS

Dwight H. Green, Governor

DEPARTMENT OF PUBLIC SAFETY

General Office, Springfield

DIVISION OF SUPERVISION OF
PAROLEES

Milton H. Summers, Superintendent

Parole Office,

Illinois State Penitentiary

Menard, Illinois

T. P. Sullivan, Director

Alvin S. Keys, Assistant Director

Col. Frank D. Whipp, Supt. of Prisons

Paul L. Schroeder, M.D., Criminologist

W. C. Jones, Superintendent of Correction

Leo E. Carr, Supt. of State Police

William J. Smith, Jr.,

Supt. of Crime Prevention

John H. Craig, Fire Marshal

R. T. Piper, Acting Supt. Bureau of

Criminal Identification and Investigation

August 25, 1942

Mr. Cecil Wright
Box No. PMB 579
Alcatraz, California

Dear Sir:

Your letter of August 20 directed to Mr. Robert B. Phillips has been referred to this office for attention and reply.

Upon your arrival in Mattoon, Illinois, contact your district parole agent, Mr. E. B. Vanscoyk, Westfield, Illinois. He will make the necessary arrangements to place you under parole supervision in this state. Also, send notice to this office and we will supply you with parole report blanks.

Yours very truly,

J. L. LAWDER,

Parole Officer

Illinois State Penitentiary

Menard, Illinois

Ccy: Mr. Phillips
Mr. Summers
JLL:EF [109]

State of California
County of San Francisco—ss.

Cecil Wright, being first duly sworn deposes and says: that he has read the foregoing exhibits and the same are true copies of the originals on file in the United States District Court for the Northern District of California Southern Division, San Francisco, in Wright v. Johnston, No. 23647-S.

That he further says that he waives the right for the production of his body in this cause and that his petition may be decided upon the merits of the case from this petition and the foregoing exhibits which are made a part of the said petition for a writ of habeas corpus ad subjiciendum.

CECIL WRIGHT,

Affiant, Petitioner

(Verification) [110]

United States of America

Ninth Judicial Circuit

Northern District of California—ss.

IN THE MATTER OF THE PETITION OF
CECIL WRIGHT TO WILLIAM DENMAN,
UNITED STATES CIRCUIT JUDGE FOR
THE NINTH JUDICIAL CIRCUIT, FOR A
WRIT OF HABEAS CORPUS AD-
DRESSED TO JAMES A. JOHNSTON,
WARDEN, UNITED STATES PENITEN-
TIARY, ALCATRAZ ISLAND, CALIFOR-
NIA.

WRIT OF HABEAS CORPUS

To James A. Johnston, Esq., Warden of the United
States Penitentiary, Alcatraz Island, Cali-
fornia:

It appearing from the petition herein that Cecil Wright was duly tried and convicted by a state court of the State of Illinois for violation of the

criminal law of that state, and was thereafter duly sentenced by said state court for a period of not less than one year nor more than the lifetime of said Wright; and that, under the law of the State of Illinois, the said sentence was in part for imprisonment in the Southern Illinois Penitentiary and, in part, under certain conditions, served under parole. That said sentence has not expired but that the said Wright, having served part of said sentence in said penitentiary, is now serving the said sentence under [111] parole of the Illinois Department of Public Safety, Division of Supervision of Parole.

And it further appearing that the said Wright is now held in custody by the said Warden Johnston in the United States Penitentiary at Alcatraz Island, California, in the Northern District of California, and in the Ninth Judicial Circuit, upon the claimed authority of orders of commitment to him, upon two sentences of imprisonment in a United States penitentiary rendered by the United States District Court for the Eastern District of Illinois. That each of said Federal sentences provide that it shall commence "upon the expiration of the sentence which the said defendant is now serving in the Southern Illinois Penitentiary," the said latter sentence being the sentence first above described, and a portion of which Wright was serving in said Illinois penitentiary at the time said Federal sentences were given, and which said Illinois sentence has not expired.

And it appearing from the said petition that the two said sentences of the United States District Court for the Eastern District of Illinois, upon commitments thereon the said Warden Johnston claims the right to hold the custody of said Wright, are sentences which have not yet begun to run and are sentences which do not entitle the said Warden to hold the custody of the said prisoner.

Now, Therefore, I, William Denman, command you that you have the body of Cecil Wright by you [112] restrained of his liberty and detained in your custody, as it is said, by whatever name the same Cecil Wright may be called or known, together with the day and cause of his being taken and detained by you, before me in my chambers, Room 316 Post Office Building, Seventh and Mission Streets, San Francisco, California, on the 10th day of October, A. D. 1942, at 11 o'clock A.M. of said day; then and there to do, submit to and receive whatsoever I shall then and there consider in that behalf.

Witness, William Denman, Judge of the Circuit Court of Appeals, this 7th day of October, 1942.

/s/ WILLIAM DENMAN

United States Circuit Judge

[113]

In the United States Circuit Court of Appeals
For the Ninth Circuit

Before Honorable William Denman, United States
Circuit Judge for the Ninth Judicial Circuit.

IN THE MATTER OF THE PETITION OF
CECIL WRIGHT TO WILLIAM DENMAN,
UNITED STATES CIRCUIT JUDGE FOR
THE NINTH JUDICIAL CIRCUIT, FOR A
WRIT OF HABEAS CORPUS ADDRESSED
TO JAMES A. JOHNSTON, WARDEN,
UNITED STATES PENITENTIARY, AL-
CATRAZ ISLAND, CALIFORNIA.

RETURN TO WRIT OF HABEAS CORPUS

Comes now James A. Johnston, Warden of the
United States Penitentiary, Alcatraz Island, Cali-
fornia, and for return to the writ of habeas corpus
issued herein on October 7, 1942, shows as follows:

I.

That the person hereinafter termed "the peti-
tioner" on whose behalf the petition for writ of
habeas corpus was filed, is detained by the respond-
ent as Warden of the United States Penitentiary
at Alcatraz Island, California, under and by virtue
of the judgments and sentences duly issued by the
District Court of the United States for the East-
ern District of Illinois in cases numbered 11032
and 11074 and the transfer order issued at Wash-
ington, D. C. by Frank Loveland, Acting Assistant
Director of the Bureau of Prisons of the Depart-
ment of Justice on July 18, 1941. [114]

II.

That this is the fourth petition for writ of habeas corpus filed by the petitioner, three previous petitions having been filed before the District Court of the United States for the Northern District of California in cases numbered 23581-S, 23611-S and 23647-S; that all three of said prior petitions filed before the District Court of the United States for the Northern District of California were denied; that all the allegations of the present petition and the questions raised therein are identical to those alleged and raised in the petition filed before the United States District Court for the Northern District of California in the aforesaid case No. 23647-S.

III.

That the entire record in the aforesaid case No. 23647-S before the United States District Court for the Northern District of California is hereby referred to and incorporated by reference in this return as though set forth herein in full.

IV.

That in said case No. 23647-S referred to in the paragraph immediately above, the writ of habeas corpus issued therein was discharged on August 20, 1942, and on September 11, 1942, the aforesaid District Court made and entered its findings of fact and conclusions of law, and the petitioner has not petitioned for or sought the right to appeal from the said order of said District Court.

Wherefore respondent prays that the petition for writ of habeas corpus be denied, that the writ

of habeas corpus issued herein on October 7, 1942, be discharged, and that the [115] petitioner be remanded to the custody of respondent.

Dated: October 10, 1942.

JAMES A. JOHNSTON

Warden, United States Penitentiary, Alcatraz Island, California.

[Endorsed]: U. S. Penitentiary, Alcatraz Island, Calif. Rec'd. Oct. 9, 1942. [116]

[Title of Cause.]

SUPPLEMENTAL RETURN TO WRIT
OF HABEAS CORPUS

Comes now James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, and for a supplemental return to the writ of habeas corpus issued herein on October 7, 1942, respectfully asks that the Exhibit hereto annexed and marked Exhibit "A" be incorporated in the records of this proceeding as a part of the return to writ of habeas corpus heretofore filed herein as though the same had therein been set forth in full.

Dated: This 15 day of October, 1942.

JAMES A. JOHNSTON

Warden, United States Penitentiary, Alcatraz Island, California

By E. J. MILLER

Associate Warden,

Acting Warden [117]

EXHIBIT "A"

Department of Justice
United States of America

DEPARTMENT OF JUSTICE

October 9, 1942

Pursuant to Title 28, Section 661, U. S. Code (Sec. 882, Revised Statutes), I hereby certify that the annexed papers are true copies of the original record in this Department of a letter addressed to Joe E. Montgomery, Warden, Illinois State Penitentiary, Menard, Illinois, by W. T. Hammack, Acting Director Bureau of Prisons, Department of Justice, dated October 6, 1939, and a letter addressed to said Mr. Hammack by the said Mr. Montgomery, dated October 12, 1939.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Department of Justice to be affixed, on the day and year first above written.

[Seal]

W. T. HAMMACK

Acting Director,

Bureau of Prisons [118]

State of Illinois

Henry Horner, Governor

Department of Public Welfare

General Office, Springfield

A. L. Bowen, Director

Mrs. Blanche Fritz,

Assistant Director

John C. Weigel,
Administrative Assistant
Joseph E. Ragen,
Superintendent of Prisons
A. J. Brumleve,
Superintendent of Charities
James P. Cox, Fiscal Supervisor
Paul L. Schroeder, M.D., Criminologist
H. Douglas Singer, M.D., Alienist
W. C. Jones, Supervisor of Paroles

ILLINOIS STATE PENITENTIARY

Menard Branch

Joe E. Montgomery, Warden
Menard, Illinois

October Twelfth, 1939

Mr. W. T. Hammack, Acting Director
Department of Justice,
Bureau of Prisons,
Washington, D. C.

Dear Sir:

This has reference to your letter of October 6th relative to Cecil L. Wright, Register No. 15386, an inmate confined in this institution.

I wish to advise you that contrary to the statement made in his letter to you, the fact that he does have a detainer on him will be an important factor in his being given a parole much sooner than if he had no "Hold" on him by the Department of

Justice, and the Parole Board will take this into consideration when his case is reheard.

Your department will be advised thirty days prior to his release from this institution so that you may have an officer on hand to take him into custody.

Yours very truly,

JOE E. MONTGOMERY

Warden

JEM/u [119]

October 6, 1939

Mr. Joseph E. Montgomery

Warden

Illinois State Penitentiary

Menard, Illinois

Re: Cecil L. Wright, No. 15386

Dear Sir:

We have a letter from your inmate Cecil L. Wright, No. 15386, dated September 3, 1939, addressed to the United States Attorney General, stating that he is serving a state sentence of from one year to life imposed on July 26, 1930; that on September 17, 1930, he was sentenced in the Federal District Court for the Eastern District of Illinois to a total of fifteen years imprisonment, ordered to begin upon expiration of service under the state sentence. He states that a Federal detainer has been filed against him at the Illinois State Penitentiary for the purpose of taking him into custody upon his release from state imprison-

ment and he advises that he could secure release on parole provided this detainer were removed.

From this letter it appears that the State Parole Board will not grant him a release while this detainer is on file.

There is no authority by which the detainer in question can be removed because it is the only insurance that the United States Marshal at East St. Louis, Illinois, who holds the commitment papers under the Federal sentence, will be informed by you of the date of Wright's release. It is not clear why the Federal detainer is regarded as a bar by the State Parole Board to the prisoner's release on parole. If such release were ordered by the Board, the detainer would induce you to promptly notify the United States Marshal, who would call at your institution and take Wright into custody for service of his Federal sentence.

Will you please advise the inmate of this reply to his letter.

Very truly yours,

W. T. HAMMACK,

Acting Director

AEG—tf [120]

[Title of Court and Cause.]

TRAVERSE TO RESPONDENT'S SUPPLEMENTAL RETURN TO WRIT OF HABEAS CORPUS.

Comes now the petitioner, Cecil Wright, and for his traverse to the respondent's supplemental return to the Writ of Habeas Corpus, represents and shows as follows:

The petitioner reasserts, realleges and reaffirms all the matters and things heretofore set forth in the said petition, as well as the following facts.

Petitioner traversing respondents exhibit "A", represents and shows: That the two letters (exhibit "A") are of no importance as affecting the conditions under which petitioner was paroled by the Illinois State Parole Board.

The conditions under which petitioner was paroled are of record in the parole office at Springfield, Illinois, and not of record in the office of the Acting director of the bureau of the United States Prison.

The respondent's counsel stated that he was obtaining the records of conditions of the parole under which petitioner was placed through the action of the Illinois State Parole Board. However the respondent shows two letters (exhibit "A") which have been taken from the files of the department of justice in Washington, D. C. These two letters (exhibit "A") cannot be considered as legal evi-

dence as affecting the conditions under which petitioner was paroled by the Illinois Parole Board.

In the petition for a writ of habeas Corpus the petitioner challenged the jurisdiction of judgments of convictions and sentences issued out of the United States District Court for the Eastern District of Illinois.

In the petition for a writ of habeas corpus the petitioner raised five points which challenged the trial court's jurisdiction. The first four points raised in the petition challenged the trial Court's proceedings under which petitioner- [121] er was convicted.

The fifth point raised by petitioner is the point at issue; under the fifth point petitioner alleged that he was tried, convicted and sentenced by a state court of Illinois to serve not less than one year and no more than a lifetime. The petitioner having been sentenced by the state Court would remain a state prisoner after his release by the state parole board and subject to the judgment of the State Court. The State Court's judgment provided * * * "that part of the sentence was to be served in the state penitentiary and a part on parole."

The petitioner was committed to the Southern Illinois State Penitentiary, Menard, Illinois, on July 26, 1930.

That fifty two days after petitioner's incarceration in the Illinois State Prison, the United States District Court for the Eastern District of Illinois imposed sentences totaling fifteen years with the

provisions "that the sentences shall commence upon the expiration of the sentence which the said defendant is now serving in the Southern Illinois Penitentiary."

On October 31, 1939, petitioner was released from the State Penitentiary by action of the Illinois State Parole Board with the provisions "that he serve an Illinois State parole."

That on the date of October 31, 1939, the United States Marshal from the Eastern District of Illinois apprehended petitioner and over petitioner's objections conveyed him out of the said State of Illinois into the State of Kansas where petitioner was imprisoned in the Leavenworth, Penitentiary.

Under the trial court's mandate the United States Marshal could not execute the writs of commitments until petitioner had served an Illinois state parole; the Illinois state parole subjects the petitioner to the state Court's judgment until discharged by due course of law. [122]

In (16 C. J. 1369) at page 1064, paragraph (b) Under Illinois statute. (1) Convict has no right to demand that he be discharged before expiration of maximum term. *Peo. v. Connors*, 126 N. E. 595; *Peo. v. Hannon*, (Ill) 126 N. E. 596; *Peo. v. Hussar*, (Ill) 126 N. E. 596. (2) Unless executive decides to shorten term of imprisonment fixed by judgment of Court, sentence does not end when minimum term has been served. *Peo. v. Connors*, (Ill) 126 N. E. 595; *Peo. v. Hannon*, (Ill) 126 N. E. 596; *Peo. v. Hussar*, (Ill) 126 N. E. 596.

Mr. Zirpoli: No, that has in it the sentence of Judge Lindley.

The Court: I want a copy of the Illinois sentence.

Mr. Cecil Wright: Exhibits R and S in the petition.

Mr. Zirpoli: You have it in your original petition?

Mr. Wright: Yes. [124]

The Court: Take it out, will you?

Mr. Zirpoli: I might state to your Honor that one of the points that the Respondent wishes to make with relation to this case, and which does not necessarily go to the merits of the petition, is the question of the propriety, or a determination of whether or not this Court, your Honor, I should say, should now entertain the present petition, and I have some authorities on which I would predicate the position that the Respondent takes in that regard.

Mr. Wright: I object to that, our Honor, because the law is to the contrary. Your Honor has equal authority to grant petitions of writs of habeas corpus as a Circuit Court Judge, individually.

The Court: That is not the question, I take it. What is the ground for your objection that, assuming I have the power, I should not exercise it?

Mr. Zirpoli: I am fully familiar, of course, with the provision in the Code which provides that the several judges of the Supreme Court, the several

judges of the Circuit Court of Appeals, and the District Court, within their jurisdiction, shall have the power to grant writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty. That is the present 452. It read differently prior thereto and was amended. Mr. Wright has cited a case in support of his petition on the original reading of the section, which provided for the Circuit Judges and not the Circuit Judges of the Court of Appeals, and did not have the concluding paragraph with relation to the filing of the papers in the District Court. However, the Lamar case was followed later by *Ex parte Craig*.

The Court: What is the citation? [125]

Mr. Zirpoli: The citation of *Ex parte Craig*—

The Court: No, the Lamar case.

Mr. Zirpoli: 274 Fed. 177 was the original case.

The Court: This is 282 Fed.

Mr. Zirpoli: I did not bring 274, because I want to show from 282 Fed. 138 the Circuit Court of Appeals, in passing upon the writ which was issued by Judge Manton, as a Circuit Judge, then concluded that the Circuit Judge did not have the power to issue the writ, and that decision was sustained on appeal to the Supreme Court in 263 U. S. 255.

I cite that now to show that the conclusion now that the petitioner makes that the right to have your Honor pass upon this is more or less a mandatory right, and a mandatory duty did not follow then. And at that time it might be said that the

Circuit Court Judge did not have the power at all, under the Supreme Court decision.

The Court: Was that a final decision?

Mr. Zirpoli: The final decision was it had to be as a District Court Judge, or a Circuit Court Judge acting in its capacity as a District Judge.

The Court: Under the present law, as I understand, the Circuit Judge within the Circuit has to entertain a writ of habeas corpus with the same promptitude that a District Court must.

I will say, Mr. Wright, your petition followed me around through the mountains until I just got it when I returned here.

Mr. Wright: I am very sorry.

The Court: And I got to work on it, and yesterday I received a letter from you complaining it had not been acknowledged. The acknowledgment was the writ. That came to me yesterday, although [126] you wrote it on the 1st. I was in Los Angeles.

Mr. Wright: I am very sorry.

The Court: You need not be sorry about it. You have a perfect right to press the matter. Any party presenting a habeas corpus petition is entitled to have it entertained. But I happened to be in the mountains. That is why you just did not find me.

Mr. Zirpoli: Now, Judge, if I may get down to more recent cases——

The Court: You have not made your point yet. You started out to say you intended to urge that I had the power——

Mr. Zirpoli: That you have the power.

The Court: But that I should refrain from exercising it?

Mr. Zirpoli: You should refrain from exercising it on these grounds, your Honor. The first ground is, the District Court is available to the petitioner. Even though there is this right in the Circuit Court Judge in his discretion to hear the petition, where the District Court is available, and where, in addition thereto, the peculiar circumstances exist that exist in the present situation, where the petitioner has petitioned the District Judge, and the Judge has, on the very same and identical questions involved, here, ruled adversely to the petitioner, and the petitioner's time has not expired for appeal, under those circumstances I feel he should be required to petition the Judge in this District Court for the right to appeal to the Circuit Court of Appeals; and I predicate my conclusion on a line of cases.

The Court: The District Court decision is final?

Mr. Zirpoli: The District Court decision is final, but there is the right of appeal. Then I have the Pagett case——

The Court: Just a moment. Suppose he does not desire to [127] appeal?

Mr. Zirpoli: Suppose that it is not desired to appeal?

The Court: Suppose he does not desire to appeal.

Mr. Zirpoli: Then, your Honor, as the Pagett

case holds, which was decided in this Circuit, where there are repeated petitions being filed, the Court can deny the petition because the identical issues have been raised.

The Court: Suppose it should happen that I did not agree with the other judges?

Mr. Zirpoli: I recognize that possibility. That would leave me in an entirely different position.

The Court: As I take it, it is admitted, I think, by Mr. Wright, that he has filed several petitions for writs of habeas corpus. You will admit, Mr. Wright, you still have time to appeal and do not intend to appeal?

Mr. Wright: Yes, your Honor.

The Court: But you are relying on this writ that you addressed to me?

Mr. Wright: Yes, your Honor. I might state that on a prior petition to the District Court I attempted to appeal to the Circuit Court of Appeals, but that was disregarded.

The Court: That was not your last one?

Mr. Wright: No, that was not the last one.

The Court: As I understand it, you referred me in your petition to the records of these other cases, and included them. As I understand, in the second case you had there you sought to appeal that case.

Mr. Wright: Yes, your Honor.

The Court: And the Court decided you had no merit in the ground of appeal and therefore the Court did not allow the appeal. [128] In the last

case, as I understand it, the Court has not denied you the right to appeal, but you do not intend to appeal from that, anyway, is that correct?

Mr. Wright: Yes, your Honor.

The Court: Mr. Zirpoli, I think I have got to examine this man's petition.

Mr. Zirpoli: Might I, your Honor, call your Honor's attention to these other cases, either for the purpose of reading them, or your Honor can read them if your Honor desires. I wanted to call these cases to the attention of your Honor, either for the purpose of reading them to your Honor now, or giving your Honor the citations for later reading.

The Court: Give me the citations for the record, and the Clerk need not put in the record what you read, unless you want it there.

Mr. Zirpoli: Whatever will be more convenient for your Honor in considering the matter later.

The Court: You do not appeal on the record before me, you know, if I happen to decide adversely to you.

Mr. Zirpoli: The first case, going back historically, was the Davis case. However, there was not a direct treatment with the problem; but the first case that deals directly with the situation, as I am endeavoring to present it now, was *United States Ex rel. Bernstein v. Hill*, which is reported in 71 Fed. (2d) 159, and there the Court said, speaking of the very section involved:

“28 U.S.C.A., Section 452 confers power upon the judges of the Circuit Court of Appeals to grant writs of habeas corpus. This does not mean, however, that a judge of the Circuit Court of Appeals is bound to entertain such application when it might have been made to a judge of the appropriate District Court. [129] In the instant case there were no circumstances alleged which would make it necessary for a judge of the Circuit Court of Appeals to allow the writ, since the appellant might have applied to either of two district judges within the Middle District of Pennsylvania, where the appellant is confined. Neither is there an allegation in the petition that an application had been made to either of these judges. A refusal by Judge Woolley to take jurisdiction did not deprive the appellant from making an application to a judge of that district. Moreover, we find no merit in the grounds relied upon by the appellant in the petition for writ of habeas corpus. The appellant was tried and sentenced upon an indictment charging him with violation of 18 U.S.C.A., Section 338, which forbids the putting of a letter or package in the post office, or the taking out of a letter or package from the post office in the furtherance of a fraudulent scheme. Each individual act of taking out or putting in a letter in furtherance of a scheme to defraud is a distinct and separate

violation of the statute. For that reason each violation may be separately punished."

The Court: In that case the merits or the propriety of the law of the charge was appealed from.

Mr. Zirpoli: Yes, this is the first case, I say, historically.

The Court: Now, in this case there has been an application, as I understand it, to all the district judges in this district who are alive.

Mr. Wright: That is true, your Honor.

Mr. Zirpoli: I have a point that I would like to make in that regard, but I want to read further from the authorities.

The next case is a case in this Circuit, James W. O'Brien [130] vs. E. B. Swope, Warden, United State Penitentiary, McNeil Island, Washington, 106 Fed. (2d) 471. This is Judge Wilbur speaking:

"Petitioner asks for a writ of habeas corpus. He alleges that he is imprisoned in the United States Penitentiary at McNeil Island, Washington, by reason of a judgment and commitment issued by the United States District Court of Oregon. He alleges that he pled guilty, but claims that he was denied assistance of counsel. A prior application for a writ of habeas corpus was made to the United States District Court for the Western District of Washington and denied. The petitioner also

petitions for the allowance of an appeal from the order of the District Court refusing to issue a writ of habeas corpus.

“The application to the Senior Circuit Judge for a writ of habeas corpus is denied.”

Then comes the case of *Whitaker v. Johnston*, 85 Fed. (2d) 199. This is a case where the petition was addressed to the Senior Judge. Judge Wilbur is speaking in the case:

“Petitioner has presented a petition for writ of habeas corpus. He is not represented by an attorney and requests me to appoint an attorney to represent him. This I have no power to do.

“Petitioner has been informed that the petition should be filed in the first instance in the District Court of the United States. He, however, desires that this petition be filed and that I act upon the same. The petition is denied upon the ground it should be made in the first instance to the District Court. It has already been pointed out that this is the appropriate procedure. * * * As this petition is denied solely upon the ground that the application should be made in the first [131] instance to the District Court of the United States, I do not comment further upon it.”

Mr. Wright: I believe those cases that he has just read, your Honor, are without merit as to my contention. My application here was addressed to

your Honor and not to the Circuit Court of Appeals.

Mr. Zirpoli: There are a number of other cases that are along the same line that I would like to read from.

The Court: Have you any case where the petitioner to the Circuit Court has exhausted all the District Judges of the District in which the prisoner is incarcerated?

Mr. Zirpoli: I would say no, I have not, but I will say there has not been an exhaustion here, because the last petition which was filed, as the record shows, is a petition that has raised all the identical questions which are raised now. A judge decided that case and decided adversely to the petitioner, and the petitioner has the right to appeal to the Circuit Court, and I feel that the Court, in the exercise of its discretion now, should require him to exercise that right of appeal rather than to petition for a writ of habeas corpus on the same identical grounds previously presented, and the basis for my conclusion on that ground I predicate upon the Pagett case, which is a case in the Circuit Court of Appeals of the Ninth Circuit.

Mr. Wright: I have read the Pagett case.

Mr. Zirpoli: 95 Fed. (2d) 839. The Court said:

“The district court denied the application upon the ground that two similar applications by the petitioner already have been heard and denied. In the order denying the present application the court stated that the

testimony adduced by the petitioner upon the previous applications did not sustain the [132] allegations of the petition in that the only facts alleged in the petition which gave this court jurisdiction in the premises were not true, and this was established by the record of the superior court in which the petition was tried. The court further stated in its order that the matters and things presented in the present petition were the same as those considered by the court on two previous petitions by the petitioner, one denied June 8th, 1937 and the other December 30th, 1937.

“In denying the present petition the court properly took judicial notice of its own records. Petitioner had a right of appeal but did not exercise it. In view of the two previous hearings wherein the court finds the same issue has been presented, it was not an abuse of discretion to deny a third application based on the same ground. The opportunity to be heard upon the second application for a writ of habeas corpus before the same judge or another judge of the same jurisdiction who had denied a prior similar application justified the denial of the renewed application. In *Salinger v. Loisel*, 265 U.S. 224, the Supreme Court held that a prior refusal to discharge a petitioner on an application for writ of habeas corpus was a matter to be considered upon a subsequent application made on similar

grounds. The court cited the case of *Ex parte Cuddy*, 40 Fed. 62, rendered by Mr. Justice Field while on circuit. See all other cases cited by the Supreme Court in *Salinger v. Loisel*, *supra*."

I cite these cases and the run of authorities, including the *Sweetney* case, which I did not read to your Honor, reported in 121 Fed. (2d) 445, which is the most recent case, in which the Senior Circuit Judge says:

"The Senior Circuit Judge has consistently followed the [133] decision of Circuit Judge Woolley, of the Third Circuit Court of Appeals, approved by that court, wherein the Circuit Judge declined to issue the writ of habeas corpus and thus disqualify himself from acting on an appeal from the final order in the proceedings where no reason is shown by the applicant could not, with equal propriety and facility, be presented to a United States District Judge or district court."

And, incidentally, *Sweetney* had heretofore filed two petitions in the District Court, so that his petition in the Circuit Court here, addressed to Judge Wilbur, was a petition following prior petitions which had been filed in the District Court.

I cite those cases to show that when an application is made to a Circuit Judge for a petition for a writ of habeas corpus, the position of the Circuit Judge becomes equal to that of a District

Judge, and therefore, he should give weight to a ruling of a judge of equal jurisdiction on an identical statement of facts and identical issues of law involved, and in giving equal weight he should not, I feel, entertain an original petition which has no more effect than an appeal would have, because the original petition is then in a sense being used as a form of appeal from the decision of a judge of equal jurisdiction.

The Court: That would be true of each successive petition, wouldn't it?

Mr. Zirpoli: It would be true of each successive petition——

The Court: If he has the right——

Mr. Zirpoli: He has the right——

The Court: To have successive petitions.

Mr. Zirpoli: Yes, but in *Salinger v. Loisel* they have given discretion to the District Judge to deny a second petition if there is no difference in the grounds recited, and that form of [134] procedure has been more or less universally followed, and it is only when new questions are raised——

The Court: Suppose, Mr. Zirpoli, you have a petition consisting of 67 pages which has passed under the eye of another judge, or two judges, and they do not get something—just don't get it. Suppose it is not argued or clearly presented, but once you see it, it sticks out like a sore thumb in the petition. Now, suppose the third judge, or the tenth judge sees that which nobody else has seen, a point which has not been impressed by argument;

if he sees that, should he say, "I am going to rely on the other person's decision," if he does not think it is right? The whole purpose of the writ is to get the independent judgment of the judge who sees it, on what he sees there. Suppose, now, something is perfectly clear to me that all three of the other judges had not seen, something in the petition that gave him the right to be free from incarceration. Would it be proper for me to say, "Because these other judges have failed to see it, I am going to shut my eyes to it"?

Mr. Zirpoli: I believe that the answer in that instance arises in the fact that there are still at least thirty days within which to take an appeal, and under the circumstances, your Honor, rather than facing your Honor in the sense of a court of appeal, reversing, you might say, their ruling, should require, instead of entertaining his petition at this time, to exercise his right of appeal.

Mr. Wright: I do not believe there is any mandatory provision that requires a petitioner to appeal if he does not wish to, and Mr. Zirpoli has the same opportunity to appeal from the judgment that your Honor should render.

The Court: To be frank with you, Mr. Zirpoli, I am going to [135] rule that I have no right to compel this man to appeal in another proceeding if he does not intend to appeal. I will accept his viewpoint of it and assume that the decision is final as to him, and he is asking me now to exercise my obligation as a judge to whom an appeal has been

made for a writ independently, and that I propose to do. Now, you have no counsel?

Mr. Wright: No, your Honor.

The Court: You have a plea here, offered as evidence material in other proceedings formerly pending in the District Court. You have pleaded that the sentence in the Illinois Court has not terminated.

Mr. Wright: That is right.

The Court: I am wondering whether or not there is any denial of that here.

Mr. Zirpoli: I am relying on the entire record in the other case before Judge St. Sure.

The Court: I am talking about one of the sentences, one of these records, here.

Mr. Wright: It was filed as an exhibit in the District Court. It would not be in my original application.

The Court: Mr. Zirpoli, here is the sentence.

Mr. Zirpoli: I would also like to put in the record the case of Brosius v. Bothkin, which is a case of the Circuit Court of Appeals for the District of Columbia, in which the Circuit Judge, the court said there that the petitioner should be required to go to the District Judge, rather than even to address a judge of the Circuit Court.

The Court: I am in accord with that. I have done the same thing, refused to consider a writ where the mill of the district judges had not been run. But here there have been three at- [136] tempts of the district judges.

Mr. Zirpoli: I want to make one argument without conceding my objections, because I would like to have an opportunity for time to get whatever additional records are necessary, and I have a wire that some records are being sent to me in connection with this application, and the conclusion on the merits.

The Court: This is the petitioner's Exhibit D, filed in the case of the District Court, 23611-S. As I understand, Mr. Zirpoli, this may be regarded as in evidence here, and will be copied into the record. I might hand it over to the Reporter for copying. I want to read the part that particularly interests me:

(The Court then read the matter appearing on page 16 of this transcript, lines 5 to 21 inclusive.)

"State of Illinois,

"Clark County—ss.

"At a regular Term of the Clark County Circuit Court, begun and holden at the Courthouse, in the City of Marshall, in and for the County of Clark, on Monday, the 14th day of July, A.D. 1930, and on the sixth day of said Term, being the 25th day of July A. D. 1930.

"Present: Hon. S. Murray Clark, Judge; Russell L. Riley, Clerk; Victor C. Miller, States Attorney; Harry O. Coldren, Sheriff.

Attest.....Clerk.

“PETITIONER’S ‘EXHIBIT D.’

“239

The People

vs.

Robert Raymond, Mark Bowles, Cecil Wright,
Monte Christe and Joseph Hartman,
Robbery.

“(The paragraph concerning Cecil Wright
is as follows:)

“And now again on this day comes the People of the State of Illinois by Victor C. Miller, State’s Attorney, and the said Defendant, Cecil Wright in his own proper person as well as by his Attorney Grendel F. Bennett also comes and issues being joined it [137] is the order of the Court that a jury come. Whereupon come the jurors of a jury of Twelve good and lawful men, to-wit: R. M. Bennett, Newton Brosman, J. B. Young, Raymond Lindley, Ed Cunningham, Fred McFarland, Bird Thompson, Marion Bartram, Cabot Hill, W. Ellington, B. F. Setzer and Wm. Cline who being duly selected, tried and sworn proceed to try said cause and the jury having heard the opening statements, all the evidence adduced the argument of counsel together with the instructions of the Court, retire in charge of a sworn officer to consider of their verdict, and now comes again the Jury in open Court and for their verdict say: We the Jury find the defendant Cecil Wright guilty of Robbery in manner and form as charged in the indictment, and we further find from the evidence that at the time

of the commission of said robbery the defendant was armed with a dangerous weapon, to-wit: with a colts 45 Automatic.

“And we further find from the evidence that the said defendant, Cecil (Tuck) Wright is about the age of twenty four (24) years.

“And now comes the defendant, Cecil Wright, into open Court by his counsel Grendel F. Bennett as well as in his own proper person and makes motion for a new trial and the Court being fully advised in the premises it is the Order of the Court motion for a new trial be overruled and denied and now comes again the defendant Cecil Wright by his counsel and makes motion in arrest of Judgment and it is the Order of the Court motion be denied and Defendant thereupon excepts.

“Now again on this day come the said People of the State of Illinois, by Victor C. Miller, State’s Attorney and the said Defendant, Cecil Wright in his own proper person, as well as by his counsel, Grendel F. Bennett, also come and now neither the said defendant, Cecil Wright, nor Grendel F. Bennett, his counsel [138] for him, saying anything further why the Judgment of the Court should not now be pronounced against him on the verdict of guilty of Robbery in manner and form as charged in the Indictment heretofore rendered in this cause.

“Therefore, it is Ordered and adjudged by the Court, that the said defendant, Cecil Wright, be taken from the Bar of this Court to the Common

and a right which is not personal to him, and I quote the Wall case for that point. I might read from that case. I might state before reading it some of the factual matters which appear in the record, and which go on to say:

“Represented by counsel, he entered a plea of guilty and was sentenced on the first count to serve a term of three years [140] in the penitentiary, to commence at the expiration of a sentence of from fourteen to twenty-eight years in the Penitentiary of the State of Louisiana which he was then serving. The imposition of the sentence on the remaining counts was suspended for a period of five years.”

He had not begun to serve the 14 to 28-year term. “About nine months later a commitment issued on such judgment and sentence; petitioner was delivered to respondent, as Warden of the Penitentiary at Leavenworth, under such process; and he is being detained under it.”

The Court goes on to say, “Petitioner contends that the United States Court was without jurisdiction to impose sentence upon him while he was serving the term in the Penitentiary of the State, and that for such reason the sentence is void. When the court of one sovereign takes a person into its custody on a criminal charge he remains in the jurisdiction of that sovereign until it has been exhausted, to the exclusion of the courts of the other sovereign. That rule rests upon principles of

comity, and it exists between Federal and State courts. * * * But either the Federal or a State Government may voluntarily surrender its prisoner to the other without the consent of the prisoner, and in some circumstances the question of jurisdiction and custody is purely one of comity between the two sovereigns, not a personal right of the prisoner which he can assert in a proceeding of this kind."

The Court: Mr. Zirpoli, the question there was whether or not the United States had the power to try this man without being surrendered by the State of Illinois. That case you just cited presents a case where the sole question is, having sentenced him, has the sentence begun to run? That is the single question [141] here. Not the power of the United States to decline to sentence him, but whether the sentence that has been rendered has begun to run against him.

Mr. Zirpoli: I quote that primarily on this question of comity on the fact that you are imprisoned under one rather than another. When you start service of the sentence is a matter that no longer is personal to you.

The Court: The thing that is personal to him is whether or not his sentence has begun to run. The sole question before me at this time, at this moment of the argument, is whether he is being held by the Warden on the Island on a sentence that has not begun to run.

Mr. Zirpoli: That depends on an interpretation of the language of the sentence of Judge Lindley, and on that I have some cases I would like to cite. Of course, the first case is the case of *Ex parte Lamar*, where the Court said:

“It is there clearly expressed that the judge fixed the commencement of service after the expiration of Lamar’s term at Atlanta. No authority supports the claim that Judge Cushman was prohibited from fixing the date of the commencement of this term to such future date. To hold otherwise would be making a mockery of the law, and to stultify the course of justice.”

Of course, that is a mild case, and not strong in our point.

The Court: That was a case where the question was whether or not the judgment on conviction could commence at the expiration of some other sentence. That question is not involved in the case that is now here. This situation, here, admits that the sentences imposed by the court commenced at a future date, but whether the date of commencement has arrived is the sole issue [142] stated in the writ, itself.

Mr. Zirpoli: And for that reason I would like to come on down to the *McNealy* case, which is a case in this Circuit, with which your Honor is quite familiar, since your Honor was one of the Judges sitting in that case. However, without endeavoring to interpret your Honor’s intent in that case, and

possibly interpreting, in that event, the opinion of Judge Stephens, who wrote the opinion, I wish to quote the following language in that case. Speaking of the sentence, "It is, therefore, ordered and adjudged by the Court that James McNeeley, alias James McNealy, be, and he is sentenced to imprisonment in the Atlanta Penitentiary for a period of three years, the serving of said sentence to begin at the expiration of the sentence he is now serving for the Southern District of Florida."

Then the Court goes on and says, "It has often been held by the courts that when two or more sentences are imposed against the same person to imprisonment in the same institution, or the same type of institution, the presumption is that they are to be served concurrently rather than consecutively, unless the contrary clearly appears. Any reasonable doubt or ambiguity on that part is resolved in favor of the defendant. On the other hand, a judgment must be reasonably construed in accordance with the intent of the trial court, if the language discloses such intent clearly and without doubt or obscurity."

Now, I believe that the language of Judge Lindley clearly indicates an intent that the Federal sentence shall run at the expiration of the sentence he is now serving in the Southern Illinois Penitentiary, meaning the sentence he is serving in the institution, itself. Therefore, you could reasonably conclude that he meant nothing other than the Fed-

eral authorities [143] would take over and have his Federal sentence commence from the time he was released from the Southern Illinois Penitentiary, and I think since the intent—that is, the feeling of the respondent is since the intent——

The Court: Mr. Zirpoli, when I first examined the sentence I had the inclination or viewpoint that you expressed, but if that were the case, it means that Judge Lindley intended to take this man out of the custody of the Illinois people when he was under sentence there, part of which was served on parole. Now, it is inconceivable to me that a Federal Judge intended to put this man in a Federal Penitentiary, although he was still serving a sentence under parole in the State of Illinois. It is inconceivable to me that the Judge would say, “I don’t care what the Illinois sentence is, whether he is out of that penitentiary or not, if he is under parole or not. Just seize him and put him in some Federal Penitentiary.” It is also inconceivable to me that a sentence would be pronounced by a Federal Judge which relied on the uncertainty of the State of Illinois surrendering the prisoner in the middle of a sentence he had not served for, serving it under parole, and would turn him over to the United States. I think Judge Lindley was looking for certitude that the State of Illinois would surrender this man when he came out of the penitentiary. So, my conclusion is that the sentence of the Illinois Penitentiary had to be served, and it

could only terminate by his serving it both in the penitentiary and outside. In other words, the words "in the penitentiary" were descriptive of the sentence.

Mr. Zirpoli: Replying to that, that very thing is being done every day. Hundreds of men throughout the nation who were on parole under one jurisdiction or another are being sentenced by [144] another jurisdiction. For instance, in our Federal Court——

The Court: I meant to say the propriety of sentencing him while he is on parole. I am talking about the propriety of construing a sentence of a Federal Court on the theory that Illinois is going to surrender this man before he has terminated his sentence, to the United States for incarceration in the Federal Penitentiary. It may be done by future negotiations; it is not something that happens at the time the Federal sentence is imposed.

Mr. Zirpoli: Yet the Judge knows, and we all know, that in almost every case in which a punishment is imposed, there is the right of parole.

The Court: There is no record proof of that.

Mr. Zirpoli: Here there is a conditional release, and just as the Court with propriety can sentence a man who is under parole, it can with equal propriety look forward to the commencement of his other sentence at the time he is released from the institution and is no longer subject to physical restraint. What the Court had in mind was the

physical restraint on Cecil Wright, and the physical restraint on him ceased to run when he was no longer under physical restraint under the Illinois sentence. I do not think we can conclude that the Court contemplated anything in its mind but physical restraint. The very nature of the judgment, the wording of the judgment, convinces the respondent that that is what it had in mind.

The Court: It refers to a judgment. It refers to a sentence of Illinois, which speaks of the custody of the man imprisoned, the terms of the sentence. As I understand, it is not disputed or denied that this man was sentenced in Illinois for not less than one year and up to life. That was, as I understand it, the [145] sentence that was imposed and referred to in the sentence which you just read from the Illinois court, is that correct?

Mr. Zirpoli: Yes, I believe that is correct. I have one other thing I want to make, and that is this: We do not know—and that is one of the documents I am endeavoring to secure—the conditions under which the petitioner was released from parole. In other words, if the Illinois authorities actually surrendered him to the Federal Government, and if, in so far as the sentence is concerned, there was a surrender, at least for the purpose of commencing the sentence, the Federal sentence, and that the Illinois authorities were relinquishing their hold in their jurisdiction to continue to detain him under their sentence to enable the service of the Federal sentence.

The Court: Assuming that to be, the sentences of the United States District Court of Illinois do not begin to run prior to the expiration of the Illinois sentence, and upon surrender to the United States. There is nothing said about that. The Illinois Federal sentence begins to run at the termination of the Illinois State sentence. Now, the sentence has not terminated by surrender, prior to its termination, to somebody else for punishment elsewhere. If that sentence of the Illinois District Court had read upon his release from incarceration, it would have marked the beginning of this sentence, but it is not so drawn, and in that connection, with the prisoner's offer of the letters from that Board——

Mr. Wright: Pardon and Parole (handing a document to the Court).

The Court: In this connection I read from the part of the record which you referred to and include in your return to the writ a letter from Ralph B. Phillips, Chief Clerk of the Division [146] of Correction of the Department of Public Safety, State of Illinois:

“Mr. Cecil Wright, Box No. Pub. 79 Alcatraz, California.

“Dear Sir: Your letter of August 20, 1942, has been received. As I advised you in my letter of October 30, 1941, the one to which you refer, which was written in reply to your letter of October 21, 1941, whenever you are released from Alcatraz you

will be required to do an Illinois parole, and I suggest that you communicate with the Parole Officer, Illinois State Penitentiary * * *."

That letter is dated August 24, 1941. Another letter appearing in this same record, addressed to Mr. Cecil Wright, is dated August 25, 1942, and signed by J. L. Lawler, Parole Officer, State Penitentiary. Have you got the writ there?

Mr. Zirpoli: The writ, itself? I think here is a copy.

The Court: Now, the Marshal's return does not set forth copies of the sentences of the Federal Court in Illinois. They appear in the record——

Mr. Zirpoli: Yes, in case No. 23647.

The Court: Both of those sentences provide that they are to commence to run "upon the expiration of the sentence which the said defendant is now serving in the Southern Illinois Penitentiary."

Mr. Zirpoli: There is a question there, your Honor, of interpretation. I believe a reasonable interpretation is an interpretation which would show physical restraint on the part of the Federal Government when it ceased in Illinois. Otherwise, assuming the parole would be for the rest of his natural life, there would be no necessity of imposing any judgment at all if it were contended or intended that judgment would commence [147] to run at the expiration of the actual sentence as such, including parole. It is question of determining the intent, and, as I view the intent, I would say, on

behalf of the respondent, that we view the intent as showing the intent for the Federal sentence to commence at the time of the discharge of the petitioner from the Southern Penitentiary of Illinois.

Mr. Wright: The petitioner was not discharged. He was merely paroled, and the law is to the contrary, that a man on parole cannot be paroled to another penitentiary for the purpose of serving a sentence.

The Court: As I take it, the question here involved is whether the sentence has expired, and the sentence which he was then serving has not expired, because according to the sentence, the man is in custody under the parole officers of Illinois. Is there anything further?

Mr. Zirpoli: Yes, your Honor. I would like to ask that this matter be continued at least another week, to make whatever showing I can with relation to that parole, whatever argument I can make from it, from the actual conditions of parole, as soon as I get the paper showing that.

The Court: There are other papers in this record, here.

Mr. Zirpoli: I would like to submit a memorandum of authorities in support of our position.

Mr. Wright: I would object to that, your Honor, because I have been incarcerated three years now on a restraint that has been illegal.

The Court: Here is the situation. This writ was not served until last Wednesday. The Government

desires to make a showing with regard to the actual conditions of the service of the Illinois sentence, and that is its right. It takes time. Mr. [148] Zirpoli is acting promptly. As I understand it, you have been in telegraphic communication?

Mr. Zirpoli: Yes, I have.

The Court: Or any other communication?

Mr. Zirpoli: No, I sent a telegraphic, an air-mail-telegraphic communication to the Attorney General, and received a telegraphic response indicating certain papers were being forwarded to me, and also quoting authorities.

The Court: Forwarded to you from where?

Mr. Zirpoli: It would be from the Illinois State Board, in connection with the parole.

The Court: Isn't there a document in this record showing the condition of release?

Mr. Wright: No, your Honor. I had one when I left the prison, and when I left the prison and was received at the Leavenworth, Kansas, prison I had twelve parole reports, arrival slip, and conditions under which I was released, and all the papers were destroyed.

Your Honor, the document I think you are referring to is a memorandum opinion upon an order denying a petition to vacate sentence.

The Court: Let me see that.

Mr. Wright: I addressed my first petition to Michael I. Welsh, and my second—second petition to Michael Roche. Judge St. Sure got both of them

and denied them, and my next application I thought I had better address it to Judge St. Sure, as he was going to get them all, anyway, so I addressed it to him.

Mr. Zirpoli: All three were filed with the District Clerk.

The Court: I am not talking about where they were filed; I am talking about the person to whom they were addressed.

Mr. Wright: I conferred jurisdiction by statute on the [149] District Judge and not to the Court.

Mr. Zirpoli: In each instance the Court allowed the case to be filed, and they didn't know which judge it was going to.

The Court: I note the petition is addressed to the Court, and follows a court procedure of assigning it through a clerk to the judge. But I am speaking now of a petition addressed to the judge and not to the court.

Mr. Wright: I objected. Here is a letter I addressed objecting to my petition being assigned to Judge St. Sure, and that is the reply I received.

The Court: According to this letter, the petition was addressed to the Court and not to the judge.

Mr. Wright: My applications will show that they are addressed to Michael J. Roche. I had his name there, and jurisdiction was taken up.

Mr. Lynch: The last petition, your Honor, is addressed to Judge St. Sure.

Mr. Wright: Yes, it is.

(At this point the telegram referred to by Mr. Zirpoli was produced.)

The Court: What is the date you received this telegram? October 8th? That is two days ago.

Mr. Zirpoli: That indicates it is being sent air mail, but we have not received it yet. I want to make one other observation for the record. I do not know what your Honor's decision may be, but if your Honor's decision is adverse to the respondent, I would respectfully ask that an order be made which would stay the actual discharge pending an appeal, because I want an opportunity, if necessary, to perfect my appeal to the Circuit Court, in order to be prepared. [150]

The Court: I am not familiar with the practice in that respect.

Mr. Zirpoli: I have looked at some cases directly on that point. This is just a conclusion I am making now. I have the right to appeal; those papers would have to be filed in the District Court, and then I would have the right to appeal to the Circuit Court, which would mean, of course, judges other than your Honor.

The Court: We will continue this over until next Saturday morning. Take this for the record. I take it that the position in the Government in this case is that the sentence of the Illinois Court is from one year to life, and that at the time that the Marshal subpoenaed the prisoner he had been

released from the Illinois Penitentiary but was on parole, under the State of Illinois law?

Mr. Zirpoli: Well, Judge, the respondent would only want to commit himself—the record would have to set forth the facts—the respondent would only commit himself to the extent that the petitioner is a prisoner in the proper institution of the respondent pursuant to the judgment and sentence of Judge Lindley. In other words, I would prefer to leave the facts remaining as they are so I would not have made any stipulation or concession which would affect me in my appeal if it becomes necessary to appeal it.

The Court: If the evidence that you offer does not show whether or not this man was and still is under sentence to be served by parole in Illinois, it will be necessary to take a deposition to that effect, requiring expense on the part of everybody. The facts ought to be disclosed. Here an inference could be drawn from these letters of the parole officers in [151] Illinois that he is still subject to sentence to be served on parole, and in violation of parole can be incarcerated in the Illinois Penitentiary.

Mr. Zirpoli: I do not want to make any statement which would unduly prolong the proceedings or require the taking of unnecessary steps. I merely want to protect myself on appeal. At the same time, whatever facts we can get in now——

The Court: I take it what the Government de-

sires and Mr. Wright desires is to have this thing put into shape so that if the decision is adverse to you, it may be appealed, and cleaned up, settled. I suppose you are aware, Mr. Wright, that if you sustain the contentions that you offered to the other judges, the contentions with respect to the character of the attorney in the jury case, and the court decides that that trial should be set aside, you may face another trial.

Mr. Wright: That is true. I understand about that.

The Court: And if you in any case should find that the sentence were invalid for indefiniteness, you run the risk of having another sentence. I am not passing on it.

Mr. Wright: I understand that, yes.

The Court: That is the risk you run.

Mr. Wright: But I would submit to a new trial. I know I couldn't walk out on the street tomorrow. I have no objection to being retried again. I understand I was convicted because I was denied my constitutional rights.

The Court: If you are successful by this action here, you understand you will not be free.

Mr. Wright: I understand that.

The Court: That is all. [152]

Saturday, October 17, 1942

11:00 o'clock A.M.

Appearances:

For Petitioner:

Cecil Wright, In Persona Propria.

For Respondent:

A. J. Zirpoli, Esq., Ass't U. S. Att'y.

Mr. Zirpoli: At this time, your Honor, I ask leave to file a supplemental return to the writ of habeas corpus. A copy of a document constituting the supplemental return has been served upon the Petitioner, and I have a copy of the brief here, Mr. Wright, which I just filed this morning. (Handing a document to Mr. Wright.)

Mr. Wright: I received a copy of that supplemental return last night at six o'clock, and I have an answer to the supplemental return that I would like to file now. (Handing a document to the Court.)

The Court: Did you write this last night?

Mr. Wright: Yes, your Honor.

The Court: Mr. Zirpoli, I find that in the return by the Marshal there is a request that photostatic copies of two letters be made a part of the evidence in this case. There is no affidavit or other indication that the letters were sent and received, and no reason given for not producing the originals, and I find that the Petitioner, in his response to the supplemental return points out "These letters cannot be considered legal evidence." Do I under-

stand that you object to the introduction of these letters?

Mr. Wright: I object and ask that they be stricken out. The reason for making that motion, those two letters were written before I was ever paroled. They were written before the [153] Parole Board ever considered my case, and it would have no bearing on the issue before your Honor.

Mr. Zirpoli: May I see the certificate which accompanied our exhibit? I believe this is in conformity with the provisions of 661, and that it is proper evidence to show inter-office communications in the usual course of business.

The Court: What do you mean by "inter-office"?

Mr. Zirpoli: It does not make any difference whether it is inter-office, but any communications in the usual course of business which have a bearing. Naturally, the first question to determine is whether or not it has any relationship or bearing on the question before your Honor, and I feel that these do have a relationship and a bearing on the question before your Honor, because I am introducing them primarily to show that the surrender of this prisoner-petitioner on the part of the Illinois authorities was a voluntary one, and that thereafter, his custody and physical restraint having been surrendered by the Illinois authorities, he is now properly in the custody of the Federal authorities, and I am using that in part because of a reliance on the Wall case, which indicates that the surrender must in a sense be a voluntary one,

and that thereafter the question of the right of the Federal authorities to hold him rather than the State authorities under the different sentences would be a right which is no longer personal to the prisoner.

The Court: What would you say to the objection to the letters prior showing an intent to take certain action are not evidence that the intent was carried out?

Mr. Zirpoli: I think I will introduce them, but I will ask that Mr. Wright be sworn for one thing, and I will ask him a [154] few questions which I think will tie in with my letters.

Mr. Wright: It shows in the letter, there, that those letters were written by the Warden of the State Penitentiary while I was a prisoner in the State Penitentiary, and before any action was taken by the Parole Board. I never appeared before the Parole Board until those letters were written, and the action taken by the Parole Board was on October 15th, and Mr. Zirpoli could have sent to Illinois and got those records instead of sending to Washington and gotten those there.

The Court: You may be sworn.

CECIL WRIGHT,

The Petitioner herein, was sworn by the Court.

The Court: Q. You just made a statement to us here. Is that statement true?

A. It is true, your Honor.

Mr. Zirpoli: Q. Mr. Wright, you were confined in the State Penitentiary there—was it Southern Illinois?

A. Southern Illinois State Penitentiary.

Q. Southern Illinois State Penitentiary, and you were serving a sentence there of one year to life, is that correct?

A. Less than one year, and no more than natural life.

Q. And that was the sentence that was fixed under the indeterminate sentence law?

A. That is right.

Q. At the time you were serving that sentence you asked to be paroled from that institution, did you not? A. Well——

The Court: Pardon me a moment. What is the question?

Mr. Zirpoli: Q. You asked to be paroled from that institution, did you not?

A. I never asked. They paroled me.

Q. Did you at any time write a letter to any Federal authorities asking them to remove the detainer which had been placed against [155] you?

A. I would like to ask, in making the answer, if I may explain it.

The Court: Explain it fully.

(Testimony of Cecil Wright.)

The Witness: On September 3rd—

Mr. Zirpoli: May I ask this, your Honor, that he tell me first whether or not he actually wrote making the request, and then I would be happy to have his explanation.

The Witness: I will answer, your Honor, yes. I would like to describe the letter.

Mr. Zirpoli: All right.

A. On September 3rd I wrote a letter to the Attorney General of the United States, asking him to remove the detainer for the reason that if he did, there was a possibility I could obtain parole, and I was then intending to, which I stated in my letter to the Attorney General, to submit my service to the United States Army—that was after the war between England and Germany—and the letter in reply to that, in response to that, it doesn't contain the contents of the letter that I wrote to the Attorney General. It is only in parts, and left parts out.

The Court: Q. Have you a copy of the letter that you wrote to the Attorney General?

A. No, your Honor, I was in the State Prison, All the papers were destroyed when I came into Leavenworth.

Mr. Zirpoli: Q. In other words, what you just told us was the reason you gave to the Attorney General for your being released, is that correct?

A. Yes.

Q. But you did request that the detainer be re-

(Testimony of Cecil Wright.)

moved, in order that your parole might be facilitated, is that correct?

A. Yes, I stated that, because I understood under the parole laws of Illinois I couldn't be paroled until that detainer was [156] removed.

Q. This letter that you wrote, would you say that that letter was a letter of September 3, 1939?

A. It was a letter of September 3, 1939, but it isn't before the Court now.

Q. No, it isn't before us, but it was a letter that you sent on September 3, 1939? A. Yes.

Q. In it you asked for the detainer to be removed to facilitate your parole, and in which you gave the explanation you just stated to us?

A. That is right, and I would like to state in answer to that that the Parole Board member Richard Dicklin, a former attorney, stated when I was before the Parole Board on a prior hearing, that when I was paroled by the State Parole Board the Federal authorities could not take us until we had served our State parole, and that was stated by a member of the Parole Board. I assume he knows the law of Illinois.

Q. Where did he tell you this?

A. He told me in the Parole Board room.

Q. Who was present at this conversation?

A. The usual Parole Board members. There were three.

Q. Do you recall who they were?

A. Why, yes. Mr. Landesco, Attorney, of Illinois; Robert D. Phillips, chief clerk of the

(Testimony of Cecil Wright.)

Parole Board, and there was Mr. Hallett—the first names I don't quite remember—of the Parole Board, which were present, and the shorthand reporter was present, too.

Q. When was this hearing?

A. This hearing—I couldn't state the exact month, but 1937.

Q. In 1937, it was the only hearing you had in that year? A. In that year, yes.

Q. And you say there was a reporter there?

A. There was a reporter there. [157]

Q. Do you know whether this was recorded?

A. Well, they must generally record all their testimony given, or anything said in the room.

Q. In other words, at least it is your belief that it was?

A. The shorthand man was writing; I assume he was taking down the proceedings.

Q. After you wrote the last letter that I mentioned, this letter of September 3rd, did you again come up before the Parole Board?

A. Yes, I did.

Q. Were you given parole?

A. I was paroled.

Q. Do you remember what the terms and conditions of your parole were?

A. Yes, for the rest of my life.

Q. Yes, and what else did they say?

A. They didn't say anything.

Q. Was anything said about your being turned over to the Federal authorities at that time?

(Testimony of Cecil Wright.)

A. No.

Q. Nothing at all?

A. Not by the Parole Board members, no.

Q. Who told you that, then?

A. I didn't know until they came and got me the day I was released on parole.

Q. You knew nothing about it until that time?

A. No.

Q. You were in the penitentiary, and then you were released on parole?

A. I was released on parole.

Q. The day you were released on parole, were you surrendered to the custody of any person?

A. Any person?

Q. Yes.

A. When I signed my conditional release, I signed it for my bona fide residence, and that was in the condition that I signed. I signed the parole before I was taken into custody out in front of the prison. I was taken into custody out in front of the prison by the United States Marshal. And I might say that in that letter in response there that you have as [158] Exhibit A it says the Marshal of East St. Louis, Illinois, was holding the commitment. Well, the Marshal was not holding the commitment in East St. Louis, Illinois, but the commitment was being held by Mr. Ryan, United States Marshal of Danville, Illinois. If they had a detainer there, they should know who was held on the commitment.

(Testimony of Cecil Wright.)

Q. But you were arrested by the United States Deputy Marshal, is that correct? A. Yes.

Q. And that was done at the time you left the institution, there? A. That is right.

Q. Where did you first see the Marshal?

A. I saw him after I got out in the front house of the Administration Building of the prison, where they give you your money and your parole officers.

Q. He accompanied you out of the prison, didn't he?

A. When he got me to the gate he put handcuffs on me.

Q. He accompanied you as far as the gate, and after you got to the gate he put handcuffs on you?

A. I would say it wasn't my fault he did.

Q. I am not questioning that, whose fault it was; I am just asking you if that was the factual situation.

A. A man in confinement ordinarily has no legal rights.

Q. I know, but, Mr. Wright, it is true, then, that he accompanied you from the Administration Building to the gate?

A. No, from the gate to the automobile.

Q. Did you see him in the Administration Building?

The Court: Q. Do I understand that he met you at the gate and accompanied you to the automobile?

A. That is right, your Honor.

(Testimony of Cecil Wright.)

Q. You had not seen him before when he met you at the gate? [159] A. No.

Mr. Zirpoli: Q. You had not seen him at the Administration Building?

A. He wasn't in the Administration Building, back in the Warden's Office where I signed the parole.

The Court: Q. As soon as you were released on parole and just free, he took you?

A. That is right, your Honor.

Mr. Zirpoli: Q. And then you were taken to Leavenworth and ultimately transferred to Alcatraz?

A. I objected to him taking me out of there and he said he had a detainer on me. I had one more year, he said, to serve on my Federal sentence. My sentence was running concurrent. The United States Marshal said that, himself. Of course, I would say—I don't know whether it would be true, or not—but I would say this—

Mr. Zirpoli: Q. As a matter of fact, you made that point, yourself, didn't you?

A. Made what point?

Q. That you just had one more year to serve under the Federal sentence?

A. No, I did not make it; he made it.

Q. Hadn't you made that point, yourself?

A. Have I ever made it?

Q. Yes. A. Not in his presence, no.

Q. You make it now, don't you?

(Testimony of Cecil Wright.)

A. Certainly. I repeat what he said.

Q. I was wondering if you were making that point on your own behalf at this time.

A. I will say this. I read the commitment papers on the train en route to Leavenworth, Kansas.

The Court: Q. Pardon me. You say you had one more year to serve on your Illinois sentence?

A. Yes, that is what the United States Marshal told me.

Q. Do you know, yourself, how long you had to serve under that sentence?

A. Not at the time, because Judge Lindley had [160] previously wrote me at the prison in 1935 and told me my sentence was running. He told me my sentence had begun to run.

Q. You mean your Illinois sentence was still running?

A. The Federal sentence. I was in the Illinois State Prison and serving concurrently my Illinois sentence.

Mr. Zirpoli: Q. Let me ask you something about that: Did you tell Judge Lindley that your Federal sentence was running, or did he write you and say your term had expired for modification of your sentence?

A. He said in these words—I wrote him applying for a writ of habeas corpus——

Q. Yes.

A. He said he had lost jurisdiction over my case

(Testimony of Cecil Wright.)

after the expiration of the term of court in which I was convicted, and especially after sentence had begun to run.

He said, "Your only remedy lies in an executive order of the President of the United States, or a parole of the Parole Board when eligible." And that letter was forwarded to St. Louis at that time to make application for clemency, and it seems James F. Chauncey (?) was United States Attorney. He wouldn't forward the necessary application papers, and through Senator Hamilton Lewis I obtained those papers, and that he guaranteed that the Senator would help me to have the sentence set aside. Now, in making that application for executive clemency, I had several affidavits from business men in Illinois, and after I prepared the application it was destroyed, too. The State of Illinois prison destroyed the papers, the Federal papers, tore them up and then I was disgusted. It was no use to proceed further with making an application. And I assumed then, from what Judge Lindley said, that that was true and I was serving my sentence concurrently, the State sentence being no more than life and the Federal sentence had expired by lapse of [161] time.

Q. Do you have the letter of Judge Lindley?

A. You have it in the deposition. You have Judge Lindley's deposition about that letter.

Q. In which he said the term of court had expired——

(Testimony of Cecil Wright.)

A. And in which he said the sentence had begun. You have that in the deposition.

Mr. Zirpoli: I am inquiring about that, because I want to make clear this particular matter.

The Court: It isn't a matter of what Judge Lindley said. The term of court had expired; the sentence had been pronounced.

Mr. Zirpoli: Yes. That is what I had in mind.

The Court: Q. Mr. Wright, you seem to have a knowledge of the law, here. How did that happen?

A. I beg your pardon?

Q. You showed a great deal of knowledge of the law here, tendering a series of documents. Did you ever study law?

A. Yes, I studied ever since I have been in prison.

Q. How?

A. Well, over in Illinois I had—I was in prison there where there were college graduates, and we had law courses in there, and I just got the benefit of the opportunity to read those books and study those books. I read all the books out of the La Salle Extension University in Chicago.

Q. Out of what?

A. Out of the La Salle Extension University in Chicago.

Q. You took a University Extension Course?

A. I had a course another inmate had, and turned it over to me. And I was under the supervision at that time studying this course of Nathan

(Testimony of Cecil Wright.)

Leopold, one of the college graduates out of Chicago. He is one of Bobby Frank's murderers.

Q. What is the effect under the Illinois law, if you know it, [162] of a breach of parole on your part?

A. I would be returned to the prison and then I would go before the Parole Board, after I am in prison thirty days, and I would then receive whatever sentence that they should impose upon me. And they might impose ten to fifteen years, maybe twenty years, or life. But, ordinarily, they have ten years, maybe, for a second violation. And they can parole you on the same sentence.

Q. Seeing you are so familiar with the Illinois law, where can I find in the Illinois law the facts concerning the law which you just stated?

A. 16 Corpus Juris, 1309 gives part of the Illinois law. It is in one page of the traverse.

Q. Are you aware, Mr. Wright, that one of the conclusions to be drawn from the cases which are presented here is that you have not been serving your sentence at all in the Federal Penitentiary?

A. That is true.

Q. You get no credit on the years that the sentence, the Federal sentence, was imposed on you?

A. No, I would have no credit, at all, according to the judgment of the court.

Q. This court has not adjudged anything yet.

A. I mean according to the judgment of the trial court—to start upon the expiration of my state

(Testimony of Cecil Wright.)

sentence. My sentence had never expired, and I had never begun the sentence.

Q. Under the Illinois law—I am asking you these questions for the purpose of aiding me in my research—under the Illinois law can that sentence for life be terminated by any action of the Parole Board? A. By executive authority.

Q. By what?

A. By the executive authority. That would be the Governor.

Q. Is that provided in the statute, or is it simply a pardon?

A. It is provided in the statute. [163]

Q. What do you get by virtue of that statute, a pardon, or is there a termination of your sentence by the Governor, or do you know?

A. Well, I don't exactly know much about that point.

Q. Have you read a statement which provides that your sentence may be terminated by executive order, or is that merely a pardon for a crime?

A. No, I haven't read my statute on that, but I believe they are. I assume from the Illinois authorities, there, I have in the traverse, there is a statute to that effect.

The Court: Am I correct in my assumption, Mr. Zirpoli, that the position of the government here is that this man was under parole at the time that he was seized by the United States Marshal and taken to Leavenworth?

(Testimony of Cecil Wright.)

Mr. Zirpoli: I believe that would be true, your Honor. I think the record would show that he was under parole, and the primary contention of the government is that it becomes a question of interpreting that sentence of Judge Lindley and in interpreting his intent it is our contention that the intent was that the sentence should begin to run upon termination of his sentence in the Illinois Penitentiary, and when the physical restraint should cease at the Southern Penitentiary of Illinois, the Federal sentence was to commence, the very nature of the sentence being a penitentiary sentence.

The Court: Assuming now our investigation of the Illinois law shows that a parole does not end his liability to incarceration under the sentence in the event that he violates a parole, would that not be a sentence still involving penitentiary detainment?

Mr. Zirpoli: Of course, my view is it is not within the meaning of the sentence of Judge Lindley. I recognize the point that your Honor is making, and I am also fully aware of the [164] implications that would come from a decision which would be adverse to the respondent, because I have not the slightest doubt in my mind that there are probably many prisoners today who are imprisoned under sentences identical to the one now before your Honor, and in which the situation is identical.

The Court: Of course, it would be a very simple thing for a sentence to read that "This sentence be-

(Testimony of Cecil Wright.)

gins to run upon the end of the imprisonment of a defendant under sentence by the State court of Illinois." What you are asking us to do is to put those words into the sentence of Judge Lindley. In other words, you are asking us to have it read, not as it is now, but that the Federal sentence ought to begin at the termination of the imprisonment of the defendant in the penitentiary, which imprisonment is a part of a sentence of one year to life of the Illinois court. Such sentences could very easily be drawn to cover the exact situation.

Q. You haven't copy of this?

A. No, your Honor.

Q. My suggestion is that you get some carbon paper, if you have to write any more of these, so that you will have copies. It would facilitate time. I spent 48 hours on a train coming up here because I believe it is the duty of a Federal Circuit Judge to hear the matter where, as here, you have exhausted the three attempts to reach District Judges. Am I correct in my understanding that all three of your petitions were addressed to individual judges, one to Judge Welsh, one to Judge Roche, and one to Judge St. Sure?

A. Yes, your Honor.

Q. How did you send your petitions to those judges?

A. Well, the first petition I never knew exactly the operation of the Court, and I forwarded it to the Clerk of the Court, and asked him to give the

(Testimony of Cecil Wright.)

petition to Martin I. Welsh; but the second [165] petition I addressed to Martin I. Welsh. I had a typewritten letter to Martin I. Welsh—correction—to Judge Michael J. Roche. It was received by the Clerk of the District Court.

Q. It what?

A. It was received by the Clerk of the District Court.

Q. But you addressed it to Judge Roche?

A. I registered it with a return receipt.

Q. From whom?

A. I received a return receipt. It had Michael J. Roche's name printed and then it was under-signed, I imagine, by his secretary. And then I made a complaint to the District Clerk about Michael J. Roche not receiving the application, and he wrote back and told me he answered Michael J. Roche's correspondence, himself. Whether he had received and opened Judge Michael J. Roche's mail I don't know, but he answered the letter. The third application—Judge St. Sure had received the two petitions that I had addressed to the other two judges, and the third petition I figured I might as well send it to Judge St. Sure.

Q. So you addressed a petition to each one of the District Judges? A. Yes.

Q. So far as you know, you exhausted all the District Judges before you petitioned to the Circuit Judge? A. Yes, your Honor.

Q. Very frankly, Mr. Wright, since you have

(Testimony of Cecil Wright.)

refused to take counsel, that throws on me the burden of studying the Illinois law, because one phase of this question is whether or not, from the Illinois law, your service had ever terminated. Is there anything further that you desire to submit?

A. In view of what you said there, no, there is not, because anything I would say would be—I know your Honor would necessarily have to study the law, I understand that, but I believe the restraint on me—— [166]

Q. You have your right for prompt action, but action could not be any more prompt than the processes of the judge's mind, and since you did not choose to have counsel, I cannot call upon Mr. Zirpoli for this work, and such investigation I have to make of the Illinois law, I will have to make, myself. You do not always find the statutes in the library that are the last word, or sometimes not the cases.

A. I would like to say, I do not like to impose upon your Honor that burden, and if your Honor sees fit, if you wish to appoint an attorney for that purpose, I have no objection to that.

Q. The trouble is, I am not here with the Court. They are sitting in Los Angeles tonight. Do you have anything further, Mr. Zirpoli?

Mr. Zirpoli: No, your Honor, except I want to urge the original point, and I have briefed that, and, of course, the Government continues to make its argument that, in so far as the sentence of Judge

Lindley is concerned, which we contend he is now lawfully serving, it would be immaterial whether he is on parole under the Illinois State law or not. The fact is he is no longer in the Illinois Penitentiary.

The Court: That may be, but when he walked out of the penitentiary he was in the custody of the Warden. Still the Illinois law——

Mr. Zirpoli: We contend that the State of Illinois voluntarily surrendered him by their acts to the Federal Government, and we feel there is enough evidence at least to suppose that that was so, that they did that.

The Court: Did you ever see the statement of the prisoner, here?

Mr. Zirpoli: No, but the exchange—— [167]

The Court: Wait a moment. As I understand it, both of you have put in the record, here, all that has happened in the three prior cases?

Mr. Zirpoli: No, these arguments were not all made in the three prior records.

The Court: No, I am talking about the statement of the prisoner in one of his petitions, that he was surrendered by the State of Illinois to the United States Government. That is correct, isn't it?

Mr. Zirpoli: Yes, but I might say this——

The Court: Wait a minute. If we have it admitted by the prisoner that he was so surrendered, what proof have you got to refute that?

Mr. Zirpoli: Admitted that he was so surren-

dered? I am not offering any additional proof except the exchange of letters.

The Court: You are trying to show by two letters prior to any action taken by anybody, letters of persons who had no authority, whatsoever. Have you a letter or a statement from him that the State of Illinois did it?

Mr. Zirpoli: We can never show naturally the intent of the State. We have to look at the actions of the officer which represented it.

The Court: Suppose he admits that the State of Illinois surrendered him? Can you go further than that?

Mr. Zirpoli: No, I do not——

The Court: You had better read your record and find what he has admitted.

Mr. Zirpoli: He has admitted now he was taken in custody by the Marshal.

The Court: His statement here is that it was after he [168] left the penitentiary and had gone out and was free that he was taken.

Mr. Zirpoli: That is why I made this other offer of proof, and the only way you can look at intent is by looking at the conditions prior to the act.

The Court: Of the parties who had the authority to surrender. You can't have a couple of policemen talking.

Mr. Zirpoli: The Federal Penitentiary authorities, in a sense, can evidence what took place. This was addressed to the Department of Public Wel-

fare and is signed by the Warden of the Penitentiary. It is presumed, at least, the Warden is performing his duty in conformance with whatever instructions may have been given to him by his superiors.

The Court: There is no evidence of any instructions.

Mr. Zirpoli: There is no evidence other than the physical facts which took place and the correspondence which preceded it would indicate the intent of parties, and that correspondence shows from the concluding paragraph, "Your Department will be advised thirty days prior to his release from this institution so that you may have an officer on hand to take him into custody." And at that time he was released on parole.

Mr. Wright: Yes, but the Warden of the State Prison is not a member of the Parole Board.

Mr. Zirpoli: I recognize he is not a member of the Parole Board. And I might add one other thing in that connection. That right to complain, as I pointed out in the Wall case, is not personal to the prisoner.

The Court: He has no right to complain of a surrender, if the State of Illinois does surrender him; that opinion holds that that is between two authorities. The point that the prisoner [169] might make—but he has admitted to the contrary—the point the prisoner might make is that he never was surrendered. The fact that somebody is waiting outside the gate with a pair of handcuffs does not

mean the State of Illinois surrendered him for that purpose. But he has stated in one of his petitions—

Mr. Zirpoli: I might go further and make one other point. It would be totally immaterial at the time if he was surrendered or how the Federal Government got jurisdiction. He cannot make the personal complaint—

The Court: Suppose they took him out of the jail yard?

Mr. Zirpoli: And they put him in a Federal institution under a sentence which is valid?

The Court: Yes.

Mr. Zirpoli: He hasn't the right to complain as to his serving that sentence. The only one who can complain is the State of Illinois, and there are cases which so hold.

The Court: I think you will find that the State of Illinois has nothing to do with whether or not a sentence has terminated.

Mr. Zirpoli: You mean their own sentence?

The Court: No—whether their own sentence has terminated.

Mr. Zirpoli: Yes.

The Court: Suppose the Marshal walked in the prison yard and just took him out.

Mr. Zirpoli: Yes.

The Court: That is no evidence that the sentence has terminated.

Mr. Zirpoli: No, that would be no evidence that the sentence had terminated in the Illinois State penitentiary.

The Court: It would be to the contrary: He was still serving it. At the time he was incarcerated, he was taken out. [170]

Mr. Zirpoli: That goes to the determination of whether or not that sentence has terminated within the meaning of the sentence.

The Court: That is not my question. I am assuming an improper and unauthorized taking over of the prisoner by the United States.

Mr. Zirpoli: What I had in mind——

The Court: Now, the prisoner has a right to complain of that as well as the State of Illinois.

Mr. Zirpoli: He has no right to complain about that. The only complaint he can make is that his Illinois sentence — he can't complain about the manner in which his custody was taken—he can only complain about the fact that his Federal sentence has not commenced to run. The point I have in mind was it would make no difference how they got his custody, whether he was surrendered or not. Let us assume he was given a 15-year sentence without any indication as to how it should run, and that it ran from the time it was imposed. 30 days after it was imposed, a Federal Marshal goes into the penitentiary and forcibly takes the prisoner from the State Penitentiary to serve his sentence in Alcatraz. He cannot complain about that, because that is a sentence which is then running, and the only question we have to decide now is, Did this Federal sentence commence to run?

The Court: These cases which have been cited

to me are on the theory that in each case the Government may surrender him to another government to enable that government to carry out its sentence. This Wall decision seems to hold that. Of course, the prisoner can complain that was done before his sentence expired and the new sentence had begun to run. That is [171] all that seems to be presented here.

Mr. Zirpoli: That, as I have stated, your Honor, we are arguing on our construction of these sentences.

The Court: The whole thing comes back to that question whether or not this sentence has begun to run and whether or not the sentence under which he was imprisoned had terminated. Well, we will consider the case submitted, then, and I will endeavor to get out my decision with as much promptitude as I can.

Mr. Zirpoli: Your Honor, naturally being advised, being prepared for the worst as well as the best, your Honor, I merely wanted to invite the Court's attention to Rule 29.

The Court: Rule 29 of what?

Mr. Zirpoli: Of the Rules of the Circuit Court with relation to appeals and the custody of a prisoner who is detained pending appeal, and particularly paragraph 3, which was a form of order that was made in *Coulson v. Johnston*, which is recorded in 35 Fed. Supp.

The Court: Mr. Reporter, the case has been submitted.

(Further discussion off the record.) [172]

Before William Denman, United States Circuit
Judge for the Ninth Judicial Circuit

IN RE PETITION OF CECIL WRIGHT, FOR
A WRIT OF HABEAS CORPUS AND TO
SECURE RELEASE FROM THE CUSTODY
OF JAMES A. JOHNSTON, WARDEN OF
THE UNITED STATES PENITENTIARY
AT ALCATRAZ, CALIFORNIA.

Opinion and Order that petitioner may proceed
in forma pauperis, that he be released from the
custody of Warden Johnston, and for bail pending
appeal.

Petition for Writ.

Writ of Habeas Corpus, copy.

Return of Warden Johnston.

Supplemental Return of Warden Johnston. Pe-
titioner's traverse of return.

Transcript of Proceedings at hearing on writ.

Brief of Petitioner.

Brief of Warden Johnston. [173]

OPINION AND ORDER GRANTING
PETITION

Prisoner Wright's petition for a writ of habeas
corpus, addressed to me as such circuit judge,
leading to a hearing and this decision that he be
released from the United States Penitentiary at
Alcatraz, California, a penitentiary situated in this
circuit, was preceded by his three petitions con-

taining similar allegations, separately addressed to each of the United States District Judges for the Northern District of California. All were denied. Hence is declined the exercise of any discretion to refuse to consider Wright's present petition, which may be permitted under such decisions as *United States v. Hill*, 71 F. (2d) 159 (CCA-3rd), and *Sweetney v. Johnston*, 121 F. (2d) 445 (CCA-9th).

[174]

Wright's second petition was not heard by the district Judge to whom it was addressed¹. He attempted to appeal from the discharge of the writ in that proceeding, but his appeal was frustrated because his petition to proceed in *forma pauperis* was denied by the district judge, who decided it against him on the ground Wright's claims were without merit.

The judge so denying a proceeding *forma pauperis*, heard the third petition and denied it. Wright, a pauper, concluded it useless again to initiate *forma pauperis* proceedings before him.

The Government contends that the making of such a second attempt to prosecute an appeal is a condition precedent to his right to have this consideration of his fourth petition. The law places no such limitation on the consideration of the claimed wrongful imprisonment. If there be a

(1) Though each petition was addressed to a separate judge, Wright headed them with the name of the district court and they were treated as if addressed to the court.

discretion to refuse to consider the petition in these circumstances, its exercise is declined. One cannot refuse to consider a petition in which, as developed at the hearing, the merits finally appear so clear, however much the petitioner may have failed to make them clear in the other proceedings.

[175]

Wright also petitioned to proceed here in forma pauperis, which petition should be granted.

At the present hearing, all the prior proceedings and the evidence there adduced were admitted as evidence on the issues joined by the Warden's return to the fourth proceeding. The Warden's return claimed the right of petitioner's custody by virtue of two consecutive sentences, adjudged on September 27, 1930, by the United States District Court for the Eastern District of Illinois. The sentences were to the penitentiary at Leavenworth, Kansas, to which Wright was taken on October 31, 1939, and from which he was transferred to that at Alcatraz, California.

The first of the federal sentences, for 10 years, was given after trial and verdict. The second, for 5 years; after a plea of guilty.

Other defendants were convicted with Wright and the sentences of all provided, "said sentences to begin upon the expiration of the sentences which said defendants are now serving in the Southern Illinois Penitentiary." This penitentiary is situated at Menard, Illinois, from which Wright had been temporarily released in September, 1930, for his trial in the federal court.

Wright contends that the clause beginning with "which" is descriptive of the entire Illinois sentence which has not yet terminated, and which he [176] now should be serving on parole in the custody of the Illinois officials. Hence, he claims the federal sentences have not commenced and the Warden has no right to his custody.

The Warden contends that the district court intended that the federal sentences were to begin when Wright was released from the Illinois penitentiary, whether temporarily or permanently, and even if, here nine years later, Wright was in the custody of the Illinois officials on parole. The Warden's position necessarily is that, by the use of the phrase "which said defendants are now serving in the Southern Illinois Penitentiary", it was not intended merely to describe a particular Illinois sentence to distinguish it from some other sentence.

However, it appears that there was evidence before the federal court from which it could be inferred that petitioner had another Illinois sentence to another place of confinement, Joliet, Illinois, upon which he was on parole when the sentence to the Southern Illinois Penitentiary was adjudged. The phrase of the federal sentence refers to the sentence which Wright is "now serving in the Southern Illinois Penitentiary," at Menard, and thus distinguishes it from the sentence to Joliet. [177]

It also appears from the evidence, and is admitted by the Government, and is so found, that on October 31, 1939, when Wright, after nine years' imprisonment in the Southern Illinois Penitentiary,

was taken into custody in Illinois by the United States Marshal for the purported service of these federal sentences, he was serving, on parole, after the nine years' imprisonment, a sentence for not less than one year and not more than life for robbery with a dangerous weapon. Cahill Illinois Revised Stat. 1929, Criminal Code, Ch. 38-515. This sentence, as all Illinois indeterminate sentences, consisted in part in his custody in the Illinois penitentiary and in part on parole in the custody of the officers of the Illinois Department of Public Welfare. The penitentiary service may be resumed after some time on parole.² [178]

(2) Ch. 38-801 Illinois Criminal Code, Cahill Revised Stat. 1929. "Rules for Parole. The said Department of Public Welfare shall have power, and it shall be its duty, to establish rules and regulations under which prisoners in the penitentiary * * *, may be allowed to go upon parole outside of the penitentiary * * *: Provided, that no prisoner or ward shall be released from either penitentiary or * * * until the Department of Public Welfare shall have made arrangements or shall have satisfactory evidence that arrangements have been made for his or her *honorable and useful employment while on parole* * * *: And, provided, further, that all prisoners and wards so temporarily released upon parole, shall at all times, until the receipt of their final discharge, be considered *in the legal custody of the officers of the Department of Public Welfare*, and shall, during the said time be considered as remaining under conviction for the crime or offense of which they were convicted or committed and *subject to be taken at any time within the enclosure of such penitentiary, reformatory and institutions herein mentioned.* * * *." (Emphasis supplied).

In this custody by the state officials of the prisoner on parole, the Illinois law is like that of the United States.

“* * * The parole authorized by the statute does not suspend service or operate to shorten the term. While on parole the convict is bound to remain in the legal custody and under the control of the warden until the expiration of the term, less allowance, if any, for good conduct. While this is an amelioration of punishment, it is in legal effect imprisonment. The sentence and service are subject to the provision of Bar 6 that if the parole be terminated the prisoner shall serve the remainder of the sentence originally imposed without deduction for the time he was out on parole.”

Anderson v. Corall, 263 U. S. 193, 196.

With this evidence and finding that Wright was in the custody of the state officials when the United States Marshal seized him for his present imprisonment, any presumption that the Marshal must have done his duty and hence that the Illinois sentence had expired and the federal sentence begun has no application.³

Wright admits that he was surrendered by Illinois to serve the federal sentences before the expiration of the Illinois sentence referred to in the

(3) Cf. *Wall v. Hudspeth*, 108 F (2d) 865, 867, where the record was silent as to what the situation was when the prisoner was seized.

federal sentence. However, the question here is not concerned with the transfer of Wright from the [179] Illinois officials to the federal officer. That is a matter of concern solely between the two sovereignties and of which Wright cannot complain⁴. The question is whether, when the United States Marshal seized Wright, regardless of how and where, the federal sentences had begun to run. If they had not, his seizure was not warranted and Wright should be released.

Though the evidence shows the reason why the federal sentence was cast in a form to make certain which of the two Illinois sentences it was to follow, the Warden contends the phrase of the federal sentences that they are "to begin upon the expiration of the sentences which said defendants are now serving in the Southern Illinois Penitentiary," does not mean exactly what it says. He would have it construed as if after the word "expiration," the words "of the penitentiary portion," should be inserted. As so revised, the Warden would have the sentence read, "to begin upon the expiration (of the penitentiary portion) of the sentences which said defendants are now serving in the Southern Illinois Penitentiary." He could not contend that it meant that Illinois had two sentences on Wright's conviction of robbery, [180] one for imprisonment which terminated on the change of custody from imprisonment to parole,

(4) *Ponzi v. Fessenden*, 258 U. S. 254, 265.

and another which began with the custody under parole.

The Warden's contention does violence to the plain language of the sentence. However, were it correct, the federal sentence would be void for uncertainty. The validity of the sentence must be determined by the facts existent at the time it was made. There was not then, and is not now, any treaty between the United States and Illinois that Illinois prisoners in the custody of its officials would be surrendered on demand of the United States. There was not then, nor is there now, any law of Illinois requiring such surrender on demand of the United States. The most that a federal district court, looking forward from the date of its sentence, could hope for was that at some time an agreement might be arrived at between the two sovereignties for the surrender of the Illinois prisoner to the United States Marshal.

Looking forward from the day of sentencing, nothing could be more uncertain to the federal court than that sometime during Wright's Illinois sentence, possibly for life, the following contingencies would happen: (a) that he would be released from the penitentiary on parole, and (b) that prior to that date an agreement would be made between the two sovereignties whereby Illinois would surrender [181] its right to Wright's custody during parole and turn him over to the United

States. Of course, the federal sentence could not have its beginning predicated upon the expectancy that the United States would violate the state's custody and seize Wright while on parole without the state's consent.

The Illinois indeterminate sentence law with its parole provision is aimed at the restoration of the prisoner to a useful place in the community. The law itself provides for the finding of some "honorable and useful employment while on parole."⁵ It provides for supervision by the Department of Public Welfare during such employment, with a view to restoration of the prisoner to his liberty when, upon evidence to the Department, it appears he "will remain at liberty without violating the law and that his or her release is not incompatible with the welfare of society." Ch. 38-804 Illinois Criminal Code, Cahill Illinois Revised Stat. 1929.

It is no fanciful conjecture to anyone familiar with the long prevalent view of those interested in the reform of persons convicted of crime, that the Illinois Department of Public Welfare, in office at the time of release of any prisoner on parole, might insist that the benevolent [182] purposes of the Act would be served best by his continuance under the Department's reforming supervision, rather than by his surrender to another sovereignty for incarceration in its penitentiary. Such a board well could consider that when its reform attempts

(5) Footnote 2, *supra*.

were successful, the reformed man would be in a position to seek executive clemency from the other sovereignty.

That a board would be less likely so to regard Wright, with his several convictions, does not make certain that Illinois, nine years later, would agree to his surrender to the United States. The litigation of this circuit for the last decade shows there is no measuring rod to determine what may or may not be done by administrative bodies in the ardent pursuit of social reforms. The after-wisdom of the fact that there happened to be a board which surrendered Wright, does not make the federal sentence any more certain when given.

Since the federal sentence ties itself to the indeterminate sentence and parole provision of the law of Illinois, the Warden's claimed construction of the beginning of the federal sentence would have to read "upon the termination of the imprisonment portion of the Illinois sentence if the Illinois authorities will then surrender their custody and give up the prisoner to the United States." Since, as seen, there is no certainty of such sur- [183] render, the federal sentences so construed would be void.

I do not agree with the Warden's construction. The true construction makes the federal sentences valid. This would require that construction if there were any ambiguity in their phraseology, which there is not. They plainly mean that they are to begin at the termination of the whole Illinois sen-

tence, not at his first penitentiary period.^{5a} That sentence may be terminated in a proceeding before the Department of Public Welfare in which the Department finds the statutory requirements are satisfied and orders Wright's discharge from his commitment, which order is approved by the Governor.⁶ [184] Here, unlike the uncertainty of an

(5a) Assuming that a sentence beginning at the termination of the imprisonment and running through the time when by negotiation, perhaps through years, Illinois finally surrendered him, were valid and the sentences actually adjudged were ambiguous and permitted either that interpretation, or that they began at the termination of the entire Illinois sentence, the uncertainty of the former interpretation would require the adoption of the latter.

(6) Chg. 38-804 Illinois Criminal Code, Cahill Illinois Revised Stat. 1929. Complete Discharge of Paroled Prisoner or Ward. “* * * whenever it shall be made to appear to the satisfaction of the Department of Public Welfare that any prisoner or ward has faithfully served his or her term of parole and the Department of Public Welfare shall have information that such prisoner or ward can safely be trusted to be at liberty and that his or her final release will not be incompatible with the welfare of society, the Department of Public Welfare shall have power to cause to be entered of record in its department an order discharging such prisoner or ward for or on account of his or her conviction or commitment which said order when approved by the Governor shall operate as a complete discharge of such prisoner or ward, in the nature of a release or commutation of his or her sentence to take effect immediately upon delivery of a certified copy thereof to the prisoner or ward,

agreement between the two sovereignties, for which there is no provision in the law creating the sentence, the termination of the Illinois sentence is determinable by the fixed procedure of the sentencing statute.

Wright contends that because the termination of the Illinois sentence is fixed by events so occurring in its parole period, the federal sentences are uncertain as to their beginning. If his contention be correct, no sentence may run consecutively on a prior sentence of any of the many jurisdictions which have indeterminate sentence laws.

This contention is not maintainable. Every indeterminate sentence ends, either at its extreme period or at some time prior thereto, when definite statutory provisions have been satisfied. In this respect, such sentences are no more indefinite as to termination than is a federal sentence, say, for forty years which may sooner be terminated by the allowance of good behavior credits. If the Warden or controlling officer or board allow all the credits, the forty year sentence will terminate at the end of say, twenty-six years. When the consecutive sentence is adjudged, it cannot be said that all, or indeed any, of the credits on the prior sentence will be earned. The consecutive sentence may commence at any time in the fourteen years between

and the clerk of the court in which the prisoner or ward was convicted or committed shall, upon presentation of such certified copy, enter the judgment of such conviction or commitment satisfied and released pursuant to said order."

twenty-six and forty years after the prior sentence is given. Just [185] as in the so-called indeterminate sentence, the terminal date is determinable on the subsequent action of persons authorized so to do. Such consecutive federal sentences are held to have the necessary certainty. *Blitz v. United States*, 153 U. S. 308, 317. Wright's federal sentences are not void because of uncertainty as to the date of their commencement,—that is, after the full period of the Illinois sentence, including his custody both in prison and on parole by the Illinois officials.

Wright's incarceration in Leavenworth and Alcatraz before his federal sentences commenced, has been without authority. His proof of the facts has made of no value to him the several years spent there which, with good behavior credits, nearly fulfilled his five year sentence. His fifteen years of federal sentences will have to be served after the termination of the Illinois sentence, unless his contention be later maintained that his ten year sentence is invalid.

Wright claims the ten year federal sentence is void because the attorney assigned him by the district court also represented other persons tried with him who had given confessions used at the trial, which confessions involved his participancy in the crime [186] charged. He claims such an attorney would prejudice him with the jury and that he would not be free to conduct a defense with the singleness of purpose the law requires. *Glasser v. United States*, 315 U. S. 60.

There is no evidence upon which Wright's five year sentence, coming after a signed confession to the federal officers and a plea of guilty, may be held invalid. Not having served that sentence, the claimed invalidity of the ten year sentence cannot be entertained in a habeas corpus proceeding. *McNally v. Hill*, 293 U. S. 131.

Wright's petition to proceed in forma pauperis is ordered granted. He should be discharged from the custody of the Warden; but, pending appeal from this decision, he may be enlarged upon recognizance with security in the amount of Five Thousand Dollars (\$5,000.00) for appearance to answer the judgment of the appellate court, provided that unless appeal be taken within ten (10) days from the filing of this order with the Clerk of the United States District Court for the Northern District of California, he shall be enlarged without such recognizance. In the absence of appeal, he shall be discharged from the Warden's custody.

WILLIAM DENMAN

United States Circuit Judge
for the Ninth Judicial Circuit

[Endorsed]: Filed Nov. 10, 1942. [187]

In the United States Circuit Court of Appeals
for the Ninth Circuit

23744

IN RE PETITION OF CECIL WRIGHT FOR A
WRIT OF HABEAS CORPUS AND TO
SECURE RELEASE FROM THE CUS-
TODY OF JAMES A. JOHNSTON, WAR-
DEN OF THE UNITED STATES PENI-
TENTIARY AT ALCATRAZ, CALIFOR-
NIA.

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS

Notice is hereby given that James A. Johnston, Warden of the United States Penitentiary, Alcatraz, California, the respondent in the above-entitled proceedings, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order and opinion of the Honorable William Denman, United States Circuit Judge for the Ninth Judicial Circuit, discharging the petitioner, made and entered in the above-entitled action on November 10, 1942.

FRANK J. HENNESSY

United States Attorney,

By W. E. LICKING

Asst. U. S. Atty.

A. J. ZIRPOLI

Assistant United States

Attorney,

Attorneys for Respondent.

District Court of the United States
Northern District of California
Southern Division

No. 23744

CECIL WRIGHT,

vs.

JAMES A. JOHNSTON, Warden, etc.

NOTICE OF APPEAL

To.....

You Are Hereby Notified that on Nov. 12, 1942, a Notice of Appeal was filed by James A. Johnston, Warden, etc. in the above entitled case. A copy of which is enclosed herewith.

WALTER B. MALING

Clerk, U. S. District Court

San Francisco, California, Nov. 12, 1942. [189]

Before William Denman,
United States Circuit Judge
for the Ninth Judicial District.

No. 23744

IN RE PETITION OF CECIL WRIGHT, FOR
A WRIT OF HABEAS CORPUS AND TO
SECURE RELEASE FROM THE CUS-
TODY OF JAMES A. JOHNSTON, WAR-
DEN OF THE UNITED STATES PENI-
TENTIARY AT ALCATRAZ, CALIFOR-
NIA.

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL UNDER RULE 75(a)

James A. Johnston, Warden of the United States Penitentiary at Alcatraz, California, the respondent herein, hereby designates the complete record and proceedings in the above-entitled cause for inclusion in the record on appeal, the same to include therein the following:

In case No. 23744:

1. Petition for writ of habeas corpus.
2. Writ of habeas corpus.
3. Return to writ.
4. Supplemental return to writ.
5. Traverse to return to writ.
6. Transcript of testimony of October 10, 1942 and October 17, 1942.
7. Opinion and Order of Circuit Judge William Denman of November 10, 1942.

8. Notice of Appeal.
9. Clerk's notice of appeal.
10. This Designation of contents of record.
11. Clerk's certificate. [190]

In case No. 23647-S:

1. Findings of fact and conclusions of law.
1. Deposition of Judge Walter C. Lindley.
3. Deposition of Harold J. Baker.
4. All of respondent's exhibit A.
5. Transcript of testimony taken in case No. 23647-S.

FRANK J. HENNESSY

United States Attorney.

A. J. ZIRPOLI

Assistant United States
Attorney,

Attorneys for Respondent
James A. Johnston

[Endorsed]: Filed Nov. 17, 1942. [191]

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 23647-S

On Habeas Corpus

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,

Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause having been submitted by the parties hereto, Cecil Wright appearing in person and without counsel and having specifically waived counsel and requested to appear and plead in propria persona, and Frank J. Hennessy, Esquire, United States Attorney for the Northern District of California, and Thomas C. Lynch, Esquire, and A. J. Zirpoli, Esquire, Assistant United States Attorneys for the Northern District of California, appearing as counsel for respondent; and evidence both oral and documentary having been introduced and the petitioner having been heard in person under a writ of habeas corpus duly issued, and the Court being fully advised in the pre- [192] mises, now makes its Findings of Fact and Conclusions of Law, as follows:

FINDINGS OF FACT

I.

That petitioner is a citizen of the United States.

II.

That petitioner is detained by respondent, James A. Johnston, as Warden of the United States Penitentiary at Alcatraz Island, California, under and by virtue of the judgments and sentences of the District Court of the United States for the Eastern District of Illinois (hereinafter called the Trial Court) in the cases of United States of America vs. Tuck Wright (Cecil Wright) No. 11032, and United States of America vs. Cecil Wright No. 11074, made and entered on the 17th day of September, 1930, and transfer order issued at Washington, D. C., on July 18, 1941, signed by Frank Loveland, Acting Assistant Director of the Bureau of Prisons of the Department of Justice, ordering the transfer of petitioner from the United States Penitentiary at Leavenworth, Kansas, to the United States Penitentiary at Alcatraz Island, California.

III.

That the sentence imposed by the Trial Court against petitioner in the aforesaid case number 11032, made and entered on September 17, 1942, provided for his imprisonment in the United States Penitentiary, Leavenworth, Kansas, for a period of five years on the first count of the indictment, three years on the second count and two years on

the third count from the date of the delivery of petitioner to the [193] keeper or warden of the said penitentiary, said sentences to run consecutively, with a proviso that petitioner pay a fine to the United States in the sum of \$10,000 and stand committed to the said penitentiary until the fine shall have been fully paid. The order of the Court in sentencing petitioner in this case further provided that the sentences imposed in the said case number 11032 shall begin on the expiration of the sentence which the petitioner was then serving in the Southern Illinois Penitentiary:

That the sentence imposed by the Trial Court in the aforesaid case, number 11074, on September 17, 1930, provided for the imprisonment of the petitioner for a period of five years, to be consecutive to and commence to run upon the expiration of the sentence imposed in case number 11032;

IV.

That the indictment in the aforesaid case number 11032 was in three counts and charged the petitioner with unlawfully breaking into and entering a building used as a Post Office, with intent to commit larceny in the said building used as a Post Office. The second count charged that the petitioner did take, steal and carry away from a building used as a Post Office, certain personal property of the United States, with intent to convert the same to his own use, and the third count charges petitioner with conspiracy to commit the offenses

alleged in the first and second counts of the indictment;

That the indictment in the aforesaid case, number 11074, charged the petitioner with having transported a stolen automobile in interstate commerce. [194]

V.

That the aforesaid indictments in cases numbered 11032 and 11074 were returned by the Grand Jurors of the Trial Court on the 5th day of June, 1930;

VI.

That on August 29, 1930, a writ of habeas corpus ad prosequendum issued as to petitioner Cecil Wright, who was then incarcerated in the Southern Illinois penitentiary for his appearance for trial on the aforesaid indictments before the Trial Court on September 16, 1930;

VII.

That from at least August 29, 1930, petitioner knew of the indictments pending against him and the fact that the same had been set for trial on September 16, 1930;

VIII.

That in the aforesaid indictment number 11032 four other persons were named as co-defendants with petitioner and at the time of petitioner's appearance before the Trial Court three of said co-defendants appeared in open Court with him for arraignment; that said three co-defendants who appeared with petitioner for arraignment on Septem-

ber 16, 1930, also appeared with him and were tried with him before the Trial Court and a jury on September 17, 1930;

IX.

That at the time of the arraignment of petitioner on Septem- [195] ber 16, 1930, in case number 11032 he was advised by the Judge of the Trial Court of the nature of the charges pending against him; that he pleaded "not guilty" to these charges; that the Trial Judge inquired of petitioner as to whether or not he was represented by counsel and when the petitioner stated that he was not represented by counsel and further advised the Court that he was without means to obtain counsel, the Trial Judge appointed J. D. Allen, Esquire, a duly qualified, competent and experienced Attorney-at-law, to represent petitioner;

X.

That said J. D. Allen, Esquire, was on said 16th day of September, 1930, also appointed by the Trial Court to represent, and did represent, the co-defendants of said Cecil Wright in said case number 11032;

XI.

That said J. D. Allen, Esquire, represented petitioner, conferred with him and on the following day, September 17, 1930, appeared as his counsel throughout the trial of petitioner;

XII.

That the petitioner did not at any time file any

affidavit requesting, or make any oral request for time to allow him to employ counsel;

XIII.

That at no time prior to the trial or in the course thereof did petitioner or any of his co-defendants object orally or in writing to the appointment of Mr. Allen as [196] their attorney nor did petitioner or any of his co-defendants at any time prior to the trial or in the course thereof express any desire for representation by any other counsel;

XIV.

That the only affidavit filed by petitioner was an affidavit filed on September 17, 1930, for a continuance of his trial in order to allow him to secure two named witnesses on his behalf;

XV.

That counsel for petitioner on September 17, 1930, moved the Trial Court of a continuance of the trial;

XVI.

That the Trial Court in the exercise of its discretion denied the motions of petitioner for a continuance of the trial because he thought that no legal ground for the continuance existed and because he believed that petitioner did not show due diligence in the making of his request for a continuance but waited until the day of the trial before making the same;

XVII.

That counsel for petitioner moved the Trial Court for a separate trial and the Trial Court in the exercise of its discretion denied the motion for a separate trial because it felt there was no justifiable ground therefor;

XVIII.

That at no time in the course of the trial did the United States Attorney request the Court to dismiss either [197] of the indictments pending against petitioner nor did the United States Attorney seek to enter a nolle prosequi as to the petitioner on either of the indictments;

XIX.

That on September 17, 1930, petitioner, while represented by counsel, entered a plea of guilty to the indictment in case number 11074 and was sentenced in the manner hereinabove set forth;

XX.

That the court reporter who reported the trial of the cause of petitioner in case number 11032 is now deceased and that no transcript of said trial was ever made;

XXI.

That petitioner was not received in a Federal penitentiary until November 1, 1939, and the serving of his sentences in the aforesaid cases numbered 11032 and 11074 did not commence to run until October 31, 1939;

XXII.

That petitioner has not served the said sentence imposed in the aforesaid cases numbered 11032 and 11074 and petitioner will not be eligible for conditional release for good time and extra good time credits earned until the 5th of November, 1949;

XXIII.

That petitioner prior to his conviction and sentence before the Trial Court had a criminal record including felony convictions. [198]

CONCLUSIONS OF LAW

I.

That petitioner has not sustained the burden of proving he was denied the right of assistance of counsel;

II.

That petitioner has not sustained the burden of proving he was denied due process of law by the Trial Court;

III.

That petitioner was not denied the right of assistance of counsel at any time during the course of the proceedings before the Trial Court and was there duly represented by counsel;

IV.

That petitioner was not denied due process of law;

V.

That there is no merit to the petition for writ of habeas corpus on file herein.

VI.

That petitioner is not now entitled to his discharge from the United States Penitentiary at Alcatraz, California.

Dated: Sept. 11, 1942.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Sept. 11, 1942. [199]

[Title of District Court and Cause.]

DEPOSITION OF WALTER C. LINDLEY

Deposition of Walter C. Lindley, of the County of Vermilion and State of Illinois, a witness of lawful age, produced, sworn and examined on his corporal oath, on the 23rd day of July A. D., 1942, at the office of the United States Attorney, Federal Building, Danville, Illinois, in pursuance of Notice of Taking Deposition, dated July 17, 1942, as a witness in a certain suit and matter in controversy now pending and undetermined in the said District Court, in the Southern Division of the United States District Court, for the Northern District of California, wherein Cecil Wright, is Petitioner, and James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, is Respondent, case No. 23647-S., on behalf of the Respondent herein, upon oral interrogatories. [200]

(Deposition of Walter C. Lindley.)

Appearances:

For Respondent:

United States District Attorney, for the
Eastern District of Illinois.

By: Ray Foreman, Esquire, Asst. U. S.
Attorney.

For Defendant: (Petitioner)

Petitioner not present and not represented
by Counsel.

WALTER C. LINDLEY

being first duly sworn by me as a witness in said
cause, previous to the commencement of his ex-
amination, to testify the truth, as well on the part
of Petitioner as the Respondent, in relation to the
matter in controversy herein, so far as he should
be interrogated, testified and deposed as follows:

Direct Examination

Mr. Foreman:

Q. State your full name.

A. Walter C. Lindley.

Q. Where do you live?

A. Danville, Illinois.

Q. What was your occupation in the year 1930?

A. United States District Judge for the Eastern
District of Illinois.

Q. Have you examined the records of the Clerk
of the United States District Court for the Eastern
District of Illinois in Criminal Case No. 11032?

A. I have.

(Deposition of Walter C. Lindley.)

Q. Have you an independent recollection, Judge Lindley, of the facts and circumstances which occurred at the [201] trial of the defendants in that case? A. I have.

Q. Do you recollect the appointment of the Attorney for the defendants in that case?

A. I do.

Q. What was his name? A. J. D. Allen.

Q. Will you describe Mr. Allen, in his capacity as a practicing attorney, Judge Lindley?

A. Mr. Allen was a regularly admitted, practicing lawyer, about fifty years of age, I should say. A student of the law, a competent, aggressive, reputable trial lawyer of a good many years experience, with a good knowledge of the law. He was a man of high character and stood for the highest ideals as a member of the colored race. He was one of the forces for the betterment of his race and a very creditable example of a competent trial lawyer.

Q. Had this attorney previously represented defendants in criminal cases in your Court?

A. He had, for a number of years, had considerable and extensive practice defending men charged with crime in my Court.

Q. Were objections made, by any of such defendants, either orally or in writing, relative to your appointment of Mr. Allen as attorney for said defendants, prior to your appointment of him as their attorney? A. No. [202]

(Deposition of Walter C. Lindley.)

Q. Were any such objections made by any of said defendants prior to the beginning of the trial of said defendants in that case? A. No.

Q. Were any objections made by any of said defendants to his appointment or his representation of any of said defendants during the trial of said case? A. No.

Q. Were any objections taken by any of said defendants to said Attorney's appointment or representation of them after the termination of said trial of said defendants?

A. Never, until I had Cecil Wright's petition in 1942.

Q. To what petition do you refer?

A. A petition I permitted him to file as a pauper in this Court, to vacate the judgment of conviction.

Q. Prior to the filing of said petition in this Court, had you received any written communications from the defendant, Tuck Wright, otherwise known as Cecil Wright, between the date of his conviction and the date of the filing of said petition in this Court? A. I had.

Q. Did defendant Tuck Wright, alias Cecil Wright, ever object or except to your appointment of Attorney J. D. Allen, as his representative in Case No. 11032, in any of said communications with you, prior to the filing of said petition to vacate?

A. No. I say that with this reservation. In the letters that I have in my file from him, I find no such ob- [203] jection at any time prior to the filing

(Deposition of Walter C. Lindley.)

of the petition in 1942, and my recollection is that at no time did he write to me complaining of the appointment of his Counsel or say anything about that matter before the petition of 1942.

Q. I call your attention to an exhibit, identified as Government's Exhibit No. 1-A. What is that, Judge Lindley?

A. That is a letter that purports to have been written on December 22, 1939 by Cecil Wright while he was confined in the penitentiary at Leavenworth, Kansas, to me.

Q. How did you receive it?

A. I received it through the United States Mail, in due course, and replied to it under date of December 26, 1939.

(Which said Government's Exhibit No. 1-A., is in words and figures following, to-wit:) [204]

GOVERNMENT'S EXHIBIT No. 1-A.

December 22-1939.

From: Cecil Wright, L. B. P. M. B. #55,980.

To: Hon. Judge W. C. Lindley, Federal Court
Bldg., Danville, Illinois.

Honorable Sir:

I am writing you with reference to my case and wish to advise that I was sentenced by you September 17, 1930. I was at that time confined in the State Prison at Menard, Illinois.

My committment here has a specification added and bracketed in, stating that my sentence starts

(Deposition of Walter C. Lindley.)

after the expiration of my state term. The bill of convoy also shows the same additional added sentence.

I wish to call to your attention some correspondence between you and I in the month of June 1935. I wrote you in regards to some advise concerning a Writ of Habeas Corpus in your Court. Your reply to me was, that you had lost jurisdiction in the case after the expiration of the term of Court in which I was convicted and especially after my sentence had begun. Your advice to me at that time, was to file application for a commutation of sentence.

At the time I was preparring my application forms, I had some "Photostatic" copies made and took the matter up with the late Senator James Hamilton Lewis. I also furnished him with a copy of the letter you wrote to me in June 1930. The late Senator Lewis took the matter up with:- Mr. James A. Finch, United States Pardon attorney. Mr. Finch forewarded the necessary [205] papers to me through the late Senator Lewis. I filled the forms out but they were destroyed by the prison authorities at Menard, Illinois. It appears to me that it would be necessary for a trial judge to consult the minutes of the court before addvissing me as to what procedure to take in the case.

Your Honor, I have been in prison almost ten years and I feel like I have served enough time for my wrong doings. I was young at that time and did not realize what I was getting into. I am not in any way connected or associated with the parties

(Deposition of Walter C. Lindley.)

here, that were sentenced on the same charge that have almost completed their term at this institution.

The record of the court shows that these men made a confession and then retracted their written statement. All I ask of you is—to go over your records and furnish the Warden of this institution a similar copy of the letter you wrote to me in June 1935 with reference to my case and sentence.

It is not my desire to go into court for an adjustment of the case, although there is a number of technicalities in the case due to the United States Supreme Court ruling and also that of the appeal Court, which makes the sentence illegal.

Any consideration shown me in regards to my own case will always be appreciated.

I am,

Obediently,

(Signed) CECIL WRIGHT

#55,980 P. M. B.

Leavenworth, Kansas [206]

Q. I now show you Government's Exhibit No. 1-B. Will you identify that, please?

A. This is a letter I received from Cecil Wright under date of April 2, 1942.

Q. How did you receive that letter?

A. Through the United States mail.

(Which said Government's Exhibit No. 1-B, is in words and figures following, to-wit:) [207]

(Deposition of Walter C. Lindley.)

GOVERNMENT'S EXHIBIT No. 1-B

From: Cecil Wright	April 2-42	Apr 3 1942
579 P. M. B.	Date.	R.R.B.

To: Hon. Walter C. Lindley, Fed. Dist. Ct., Dan-	
ville. Ill.	Address

Honorable Sir:

I have filed a Motion to Vacate Judgment and Sentence in case No. 11032, with the Clerk of the Court. This motion does not apply to the five year sentence in case No. 11074.

I have filed the motion in propria persona and no counsel will appear for me; and it is my desire to have the motion heard and determined from the contents therein.

I would like to state that after my conviction in case No. 11032, I have lived and abided by the rules and regulations of the various penitentiaries in which I have been continuously imprisoned under a judgment of convictions since September 17, 1930.

Of course your Honor may feel that my incarceration in Alcatraz has no doubt come about from some sort of disorder; but that is not true as my being in Alcatraz is only from the results of Habeas Corpus proceedings filed in the District of Kansas.

The case No. 11032 set forth in my motion is obviously unconstitutional and void; it is not only void for the reason that my constitutional rights were denied, but the sentence is void by lapse of time.

It is not my desire to put the government to the

(Deposition of Walter C. Lindley.)

expense of a new trial, but I am entitled to a new trial and no [208] doubt can obtain the same on appeal if the same is denied by Your Honor.

Thanking you in advance for your kind and careful consideration of this matter, I humbly express my appreciation to your Honorable Court, I am

Obediently,

(Signed) CECIL WRIGHT,

#579 P. M. B.

Alcatraz, California. [209]

Q. You have received other letters in addition to those identified by you as Government's Exhibits Nos. 1-A and 1-B?

A. Yes, sir. From time to time, over the years, Mr. Wright has written me. He wrote me shortly after his conviction, requesting a reduction of sentence and I advised him that I could not modify his sentence; that the term had expired; that his sentence had begun and that his recourse lay in application for executive clemency, or when he should become eligible, in an application for parole to the Parole Board. Some of these letters were long and they contained nothing other than is reflected in the two letters I have identified.

Q. Were any statements made by Tuck Wright, alias Cecil Wright, in any of such additional letters, relative to your appointment of Counsel for him during the trial of this case?

(Deposition of Walter C. Lindley.)

A. Never until his application of 1942. Referring to his letter of April 2, 1942, Government's Exhibit No. 1-B, Mr. Wright's attitude apparently, until this year, was disclosed by his letter of December 22, 1939, wherein he said he had been in prison almost ten years and felt he had served enough time for his wrongdoing. He said in that letter that he was young at the time and did not realize what he was getting into. This appears on the second page of his letter of December 22, 1939, Government's Exhibit 1-A, in the second paragraph. [210]

Q. Did the defendant, Tuck Wright, alias Cecil Wright, at any time prior to or during the course of the trial of said case, request the appointment of an attorney other than Mr. Allen to represent him in said trial? A. No.

Q. Did the defendant, Tuck Wright, alias Cecil Wright, at any time prior to or during the course of the trial of said case, request the opportunity to employ separate counsel to represent him in said trial? A. No.

Q. Have you a recollection, Judge Lindley, of the events which occurred at the time of your appointment of Mr. Allen as Attorney for the several defendants in Case No. 11032?

A. Yes, sir.

Q. Will you kindly state the events which occurred at that time?

A. When Wright was arraigned, he was advised

(Deposition of Walter C. Lindley.)

that he might plead guilty or not guilty. That, if he plead guilty, it would be the Court's duty to sentence him. If he plead not guilty, he would be entitled to a trial, either by jury or before the Court. In response to the arraignment and these suggestions from the Court, Wright entered a plea of not guilty. As presiding Judge, I then inquired of him as to whether he had Counsel, and advised him he was entitled to Counsel. He replied that he had not. I inquired as to whether he had funds with which to procure Counsel. He assured me he had none. I asked him if there were any means by which he [211] could obtain Counsel. He assured me that there were not. I therefore appointed Mr. Allen, who happened to be in the Court Room, awaiting another matter, and I asked him if he would be willing to undertake to defend the defendants in the case. Mr. Allen graciously accepted the responsibility. No objection was made by any defendant. I directed the United States Attorney to give Mr. Allen full access to all of the file, disclosing all evidence against the defendants, and the United States Attorney complied with the request. When the case came on for hearing before the jury, the jury was selected in the ordinary manner and Mr. Allen defended throughout the trial, making such defense as he could under the facts presented, and appealed to the jury for an acquittal.

Q. Were any documents or pleadings of any nature prepared by Mr. Allen, as Attorney for Tuck Wright, alias Cecil Wright?

(Deposition of Walter C. Lindley.)

A. The only motion or pleading filed was an affidavit of Wright, asking for a continuance. I think a copy of it appears in the transcript.

Q. Were any oral motions made by this Attorney in behalf of defendant, Cecil Wright?

A. None other than the motion for a separate trial and such other motions as were made during the course of the trial by objections to testimony, or motions to strike, and a motion for an additional charge to the jury. [212]

Q. Do you have any independent recollection of any such additional motion?

A. Yes, sir. My recollection is that Mr. Allen suggested that I had overlooked charging the jury as to the effect of the statements of the respective defendants. I thought I had fully explained that to the jury, but, upon his suggestion, I again charged the jury, as he moved that I should, that no confession was binding upon any person other than the one who made it, and that it was not to be considered as evidence against any other defendant.

Q. Was there an official reporter employed in the United States District Court, for the Eastern District of Illinois, at the time of the trial of this case?

A. No, sir.

Q. Was a reporter available to take the testimony in cases in such Court, when especially employed to do so?

A. Yes, and even when defendants on trial requested a court reporter and had no funds with which to hire him.

(Deposition of Walter C. Lindley.)

Q. Was any request made by any of the defendants in Case No. 11032 for the reporting of the testimony in the case?

A. I am not certain but my best recollection is that there was and that Mr. Gannon took the evidence. I may be mistaken about this.

Q. Where is Mr. Gannon at the present time?

A. He died a number of years ago.

Q. Was the report of this testimony, if taken, ever transcribed? [213]

A. Not that I ever heard of or knew.

Q. Was there ever any request made in this case for the transcription of said testimony, if such was taken?

A. Not until after Mr. Gannon had died, and then only by inference in that petition—the petition of 1942.

Q. In the trial of Case No. 11032, did the United States District Attorney, at any time during the trial of said case, request the Court to dismiss the indictment as against the defendant, Tuck Wright, alias Cecil Wright? A. No.

Q. Was any motion of any similar character made by the United States District Attorney, or any Assistant United States Attorney, during the trial of said case?

A. No, and I might add that I have always believed it to be the law that the United States Attorney may nolle pross or dismiss an indictment, irrespective of the Court's desire; in other words upon

(Deposition of Walter C. Lindley.)

motion of the United States Attorney to nolle pross or dismiss an indictment, the Court must grant that motion, and that rule I have consistently followed. I am sure no such motion, or as Mr. Wright puts it in one of his letters to 'squash the indictment' was ever made.

Q. Can you tell us, Judge Lindley, why there was a denial of the motions for continuance and for severance by the defendant, Tuck Wright, alias Cecil Wright? [214]

A. The motion for continuance was denied because I thought that no legal ground for continuance existed. The affidavit disclosed that defendant was evidently aware of the indictment against him as he said that he had attempted to write to two witnesses, but that the authorities at the State Penitentiary did not let his letters go out, but he did not show that from the time he acquired knowledge of the indictment up until the time of the trial, he made any other effort or attempt to get in contact with witnesses or arrange for their presence, or subpoena them. He consulted no lawyer; he wrote no lawyer. He did not write the Judge or the United States Attorney, but waited until the time of his trial, and then made an application for continuance. I believed he had not shown due diligence. If I erred, it was because I believed that fact.

As to the motion for severance, I thought that inasmuch as these defendants had been indicted to-

(Deposition of Walter C. Lindley.)

gether, as co-defendants, inasmuch as they were charged with conspiracy jointly, the Government should not be put to the expense of more than one trial before one jury. I believed that I could adequately protect the rights of each defendant by my charge to the jury, and this I attempted to do, and, in my discretion, therefore I denied the motion. If you will permit me, I will have you incorporate in the record a copy of my letter to Mr. Wright under date of December 26, 1939, and that [215] of January 22, 1940.

Mr. Foreman: Such documents may be identified as Government's Exhibits Nos. 1-C and 1-D, Exhibit 1-C being the letter of December 26, 1939, and exhibit No. 1-D, the letter of January 22, 1940.

(Which said Government's Exhibits Nos. 1-C and 1-D, so marked for identification, and so identified, are in words and figures following, to-wit:) [216]

GOVERNMENT'S EXHIBIT No. 1-C.

Mr. Cecil Wright,
#55980 P. M. B.,
Leavenworth, Kansas.

Dear Sir:

I have your letter of December 22. As I have previously advised you, the jurisdiction of a trial judge over a case ends when sentence begins. He has no more power of authority over your sentence than the man of the street. Your remedy, as I

(Deposition of Walter C. Lindley.)

previously advised you, lies in petition for parole or petition for commutation of sentence. Relief under each of these must be made by authorities other than the court.

I do not understand how it could be that prison authorities at Menard destroyed your papers, and I am sure that if you consult the warden at Leavenworth you will be furnished with authority to make proper application for parole or for executive clemency. On the former, the Parole Board acts and on the latter, the President through the Department of Justice acts, and obviously, each of these authorities is wholly outside the Court.

Yours very truly,

WCL:J [217]

GOVERNMENT'S EXHIBIT No. 1-D

January 22, 1940.

Mr. Cecil Wright,
#55,980 Box No. P. M. B.,
Leavenworth, Kansas.

Dear Sir:

The law is, as I have previously said, that once a defendant has entered upon the service of his term, the trial court has no more jurisdiction over him than the man in the street. It is not necessarily the expiration of the term at which the trial occurred that terminates the jurisdiction,—it is the commencement of the execution of the sentence. The

(Deposition of Walter C. Lindley.)

Supreme Court of the United States has many times so decided. The only exception to this rule occurs where the trial court suspends at least a part of the sentence for a definite period in the future and retains jurisdiction. As this did not occur in your case, my power is at an end and your remedy lies with the executive authorities for executive clemency or parole.

If you believe that your incarceration is wrongful under the constitution, you have a right to test it by habeas corpus proceedings in the United States Court where you are located, but you cannot proceed here.

Obviously, I cannot accede to your statement that you were deprived of your constitutional rights. Every defendant in this court is advised of the charge against him. He may plead [218] guilty or not guilty. If he pleads not guilty and has no funds, a lawyer is assigned to defend him. If he has material witnesses whose presence he cannot secure, the United States statutes furnish him with relief through government advancement of funds to secure the witnesses.

Further communication to me will be of no avail because, as I have assured you, there is nothing I can do for you.

Yours truly,

United States District Judge.

WCL:J [219]

(Deposition of Walter C. Lindley.)

A. I might add that I have read Mr. Wright's several petitions and letters, and that I never knew of the present objections until early in 1942. My feeling, upon an analysis of his letters in the past and the recent change in position, is that brooding over his sentence, he has come to believe that certain things occurred which never existed. Obviously, the sentence I gave him was somewhat severe. Yet, in my discretion as trial Judge, I believed the facts and circumstances to be such as to justify the sentence.

And further deponent sayeth not.

(Signed) WALTER C. LINDLEY [220]

CERTIFICATE

State of Illinois

Vermilion County—ss.

I, Gertrude Downey, A Notary Public within and for the County of Vermilion and State of Illinois, the officer acting by virtue of authority in Notice to Take Deposition, the original of which is hereto attached and made a part hereof, in the taking of the deposition of said Walter C. Lindley, the witness, do hereby certify that previous to the commencement of the examination of said Walter C. Lindley, as witness in the cause entitled Cecil Wright, Petitioner, vs. James A. Johnston, No. 23647-S, he was duly sworn to testify the truth in relation to the matter in controversy between the above named Petitioner and Respond-

(Deposition of Walter C. Lindley.)

ent, so far as he should be interrogated concerning the same; that said deposition was taken down by me in shorthand, at the office of the United States Attorney for the Eastern District of Illinois, in the Post Office, at Danville, Illinois, on the 23rd. day of July, A. D., 1942, commencing at the hour of 10:00 A. M. of said day; that said deposition was taken upon oral interrogatories propounded by Ray Foreman, Esquire, Assistant United States Attorney, and said interrogatories, and the answers thereto, were reduced to writing by me, and the foregoing deposition is a full, true and correct transcript of the testimony of said witness, given at the time and place aforesaid, and in the order in which said oral [221] interrogatories and the answers thereto were given.

That the signature of said witness is the genuine signature of said witness, Walter C. Lindley:

I further certify that I am not of counsel or attorney for either party in said cause, and am not interested in the outcome of said case.

I further certify that my commission expires on the 14th. day of October, A. D., 1943, and is, at the time of the making of this certificate, in full force and effect.

Given under my hand and Official Seal, at Danville, Illinois, this 25th. day of July, A. D., 1942.

[Seal]

GERTRUDE DOWNEY

Notary Public.

My Commission expires: October 14, 1943. [222]

(Deposition of Walter C. Lindley.)

[Title of District Court and Cause.]

NOTICE OF TAKING DEPOSITION

To Cecil Wright, Petitioner:

You will please take notice that on Thursday, July 23, 1942, at 10:00 o'clock A. M. the deposition of Walter C. Lindley, United States District Judge for the Eastern District of Illinois, will be taken before Gertrude Downey, Notary Public, or any other Notary Public of competent authority who is not of counsel or attorney for either party or interested in the outcome of the case, at the office of the United States Attorney for the Eastern District of Illinois, Danville, Illinois;

That said deposition is to be taken upon oral interrogatories and pursuant to the provisions of the Revised Statutes of the United States and the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934, Chapter 651, and will begin, as above stated, at 10:00 o'clock A. M. of said day and will continue from day to day thereafter until completed, transcribed, signed and properly attested to. It shall then be forwarded by said Notary Public to the Clerk of the United States District Court, Southern Division of the Northern District of California, San Francisco, California, under the proper case heading and number as above set out.

(Deposition of Walter C. Lindley.)

Dated: July 17, 1942.

FRANK J. HENNESSY

United States Attorney

[Endorsed]: Filed Aug. 13, 1942. [223]

[Title of District Court and Cause.]

DEPOSITION OF HAROLD G. BAKER

Deposition of Harold G. Baker, of the County of Saint Clair and State of Illinois, a witness of lawful age, produced, sworn and examined on his corporal oath, on the 29th day of July, A. D., 1942, in pursuance of Notice of Taking Deposition, dated July 24, 1942, to be continued from day to day until the completion of said Deposition, which said Deposition was continued by me on July 24, 1942, to July 29, 1942, at the office of the United States District Judge, Federal Building, East St. Louis, Illinois, as a witness in a certain suit and matter in controversy now pending and undetermined in the said District Court, in the Southern Division of the United States District Court, for the Northern District of California, wherein Cecil Wright is Petitioner, and James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, is Respondent, case No. 23647-S., on behalf of the Respondent herein, upon oral interrogatories. [224]

Appearances

For Respondent:

H. Grady Vien, United States District Attorney, for the Eastern District of Illinois; and
Ray Foreman, Assistant United States District Attorney for the Eastern District of Illinois.

For Defendant: (Petitioner)

Petitioner not present and not represented by Counsel.

HAROLD G. BAKER

being first duly sworn by me as a witness in said cause, previous to the commencement of his examination, to testify the truth, as well on the part of Petitioner as the Respondent, in relation to the matter in controversy herein, so far as he should be interrogated, testified and deposed as follows:

Direct Examination

By Mr. Vien:

Q. State your name, please.

A. Harold G. Baker.

Q. What is your business? A. Lawyer.

Q. Your offices are where?

A. Murphy Building, East St. Louis, Illinois.

Q. How long have you been practicing law?

A. I was admitted in 1921.

Q. Where have you practiced since that time?

A. In East St. Louis. [225]

(Deposition of Harold G. Baker.)

Q. What has been the nature of your practice since 1921, Mr. Baker?

A. I was in the general practice of the law with my father for a time after I was admitted to the Bar. I was then in the firm known as Keefe, Baxter, Miller and Baker which represented various railroads and corporations. In 1926, I was appointed United States Attorney for the Eastern District of Illinois and served and devoted my full time to those duties until 1931. In 1931, Mr. Lesemann, who had been my chief assistant while I was United States Attorney, and I started the practice of law together, the firm being Baker and Lesemann. Subsequently, other members were admitted to the firm and it is now composed of Baker, Lesemann, Kagy and Wagner. We are engaged in the general practice representing such concerns as the Southern Illinois National Bank, the Western Union Telegraph Company, Aetna Casualty and Insurance Company, Western Insurance Company and concerns of that sort.

Q. You have had extensive practice in the Federal Court in the Eastern District of Illinois?

A. Yes, both before and after I was United States Attorney.

Q. You have represented defendants in criminal cases?

A. Yes, sir, numerous criminal cases. [226]

Q. During the time you were United States

(Deposition of Harold G. Baker.)

Attorney from 1926 to 1931, what was the nature of the work you personally did in the office?

A. I handled cases from the time a complaint was received in the office, drafted informations and indictments and handled the matters before the grand jury and tried cases myself. There were, at that time, two assistants who were also engaged in the same sort of work. One in Danville and one in East St. Louis. Mr. John Speakman, who died a few months ago was the assistant at Danville and Mr. Ralph Lesemann, now one of my law partners, was the assistant at East St. Louis.

Q. In the case of the United States of America versus Cecil Wright, Number 11032, did you personally handle any part of that case?

A. My recollection is, Mr. Vien, I handled the entire matter from the time the first reports of the burglary at Strasburg were received until conviction and the last official act I think I performed in the case was in submitting the parole reports in accordance with the procedure then in force and those were dictated by me.

Q. Was there other defendants?

A. Yes. My recollection is there were numerous other defendants [227] and the question arose at the inception as to who would be charged with the various offenses. These men had been arrested, as I recall, in Decatur, Illinois, which is in the Southern District of Illinois, in possession of rifles, field glasses and automatic pistols which had been stolen

(Deposition of Harold G. Baker.)

from the armory at Sullivan, Illinois, which is in the Eastern District of Illinois, and subsequently some of them were identified as having been engaged in the robbery of the post office at Strasburg and others were found in the possession of a stolen automobiles with the result that we divided the charges and indicted one group for the Strasburg robbery and I think two other individuals for the theft of the automobile and their transportation of the automobile in interstate commerce.

Q. Was Cecil Wright one of the defendants in that case?

A. Yes, my recollection is that Cecil Wright was indicted in the Strasburg robbery, in case number 11032, and also indicted for the transportation of the stolen automobile, having been arrested in the stolen automobile at Gary, Indiana, and that was case number 11074, I think.

Q. Did you personally participate in the trial of Case Number 11032?

A. The files of the United States Attorneys Office, which I have examined, show on the file cover in my own hand writing [228] the arraignment, the appointment of counsel, and also show the name of the judge before whom the case was heard and the fact that there was a trial by jury, and the sentence. Also on that file is a notation in the hand writing of William C. Ingram, which I recognize, showing the defendants were notified on August 29, 1930 that the case was set for trial on September

(Deposition of Harold G. Baker.)

17, 1930. Certain of the defendants were in various penitentiaries. Monte Crist was in the Indiana State Penitentiary at Michigan City, Indiana, and it was necessary for us to secure a writ of habeas corpus ad prosequendum. This issued sometime in the summer of 1930 and Governor Leslie of Indiana refused to allow the Warden to recognize the writ.

Q. Who was William C. Ingram?

A. Assistant United States Attorney. Prior to his being admitted to the bar he had been chief clerk in the United States Attorney's office but my recollection is that by 1930 he had been admitted to the bar and upon his admission he was appointed as an assistant United States Attorney, performing the duties of chief clerk in the office of the United States Attorney.

Q. Do you have a recollection of the actual trial of this case, Mr. Baker? [229]

A. Yes, I recall the defendants were arraigned on the 16th of September, 1930; that Judge Lindley advised them as to their right and as to his duties in the event a plea of guilty was entered and their right to counsel. They advised the court they were without counsel and Judge Lindley appointed J. D. Allen of Danville to represent them.

Q. Was he appointed to represent all of them?

A. That is my recollection.

Q. What day was he appointed?

A. September 16, 1930.

(Deposition of Harold G. Baker.)

Q. What was the date of the trial?

A. September 17, 1930.

Q. Were the defendants in court at the time Mr. Allen was appointed?

A. Yes, Mr. Allen was appointed at the time of their arraignment, I believe. He was there at the time of the arraignment and at the trial.

Q. Did they make any objection concerning Mr. Allen's appointment at the time it was made?

A. None that I recall.

Q. Do you know whether the defendants, including Cecil Wright, conferred with Mr. Allen in regard to the case?

A. Mr. Allen conferred with the defendants immediately after [230] his appointment and came to the office of the United States Attorney which was down the hall from the court room at Danville, and asked to see certain portions of the file and we gave him the information he desired and whether he went back and discussed the matter with them in the afternoon, I wouldn't know, but I imagine he did.

Q. Did you know J. D. Allen prior to his appointment in this case?

A. Yes, for four or five years prior to the time of this incident.

Q. Had he ever appeared in the Federal Court of the Eastern District of Illinois representing defendants in criminal cases prior to that time?

A. Yes, he had an extensive practice in Dan-

(Deposition of Harold G. Baker.)

ville and the surrounding territory and had appeared in civil matters and criminal matters in the Federal Court.

Q. What would you say was the character and standing of Mr. Allen as a member of the bar of the Federal Court at that time?

A. I have and had the highest regard for his honesty and integrity and his ability as a lawyer. He always protected his client's interests and he knew the law and was adept in following it in a given case. He was a good lawyer.

Q. Was any objection made by Cecil Wright to you or to Judge [231] Lindley prior to the time of the commencement of the case concerning the appointment of J. D. Allen as attorney for Cecil Wright?

A. None. No representation was made to me and none to Judge Lindley to my knowledge indicating that Cecil Wright was dissatisfied with the appointment of Mr. Allen.

Q. Were any objections made by Cecil Wright during the trial of the case?

A. None. He made no objection whatever to the appointment or the action of Mr. Allen. The first knowledge I had of this matter was when you gentlemen advised me of the fact you wanted to take my deposition, which was about a week or two ago. In the meantime I have had an opportunity to go into the correspondence between Cecil Wright and myself while he was incarcerated in

(Deposition of Harold G. Baker.)

the Southern Illinois Penitentiary and in none of the correspondence did he ever protest about the action of the trial court and the first knowledge I had of the charges he now makes, as I said, was about two weeks ago.

Q. Did Cecil Wright ever make any objection or criticism to you personally or by letter of the method of the conduct of the trial by his attorney, Mr. Allen?

A. No and he had ample opportunity so to do over a long period [232] of time because as I said awhile ago, there was some correspondence with him and my recollection is that he wrote a letter to Prat Taylor, who was then a Deputy United States Marshal, concerning certain of the crimes which had been committed by the gang he had been associating with, which letter, according to the records in the file, I forwarded to K. P. Aldrich who was then Post Office Inspector in charge at Chicago and who is now Chief Post Office Inspector. I also recall, after reviewing the file, Wright wrote me about certain crimes with which he was associated and I referred his letters to the Special Agent in charge of what was then the Bureau of Investigation of the Department of Justice in St. Louis.

Q. Did Cecil Wright, to your knowledge, ever request the appointment of any other attorney?

A. No, sir.

Q. What would you say as to the conduct of

(Deposition of Harold G. Baker.)

the trial of Cecil Wright by J. D. Allen as to whether he had a fair trial?

A. In my opinion, he did have a fair trial. In my opinion, Mr. Allen protected the interest of Cecil Wright throughout the entire trial.

Q. Did Mr. Allen ever make a motion for a continuance of the trial of the case?

A. My recollection is that Mr. Allen came in on the morning of [233] the trial, which was some 24 hours after he had been appointed and stated to the Court, on behalf of the defendant Wright, he wished to move for a continuance and presented some sort of affidavit. The matter was argued before Judge Lindley and I resisted the motion because as I say, he had had several weeks at least to prepare for the trial, having been notified in August as to the date the case was set for trial, and subsequently, it is my recollection, immediately after the motion for continuance was denied, Mr. Allen made an oral motion for a severance and Judge Lindley said at that time that he would keep in mind the situation which Mr. Allen presented and did so in his charge to the jury.

Q. Was there a motion to "squash" filed by Mr. Allen on behalf of his client?

A. No, no demurrer to the indictment or any motion of that nature was ever filed.

Q. The indictment was never attacked in any manner, shape or form?

(Deposition of Harold G. Baker.)

A. That's my recollection, either in Case Number 11032 or the companion cases.

Q. And was any motion made by you, as United States Attorney at the close of the plaintiff's case or at the close of all the evidence to "squash" the indictment or dismiss the case as to Cecil Wright and discharge him? [234]

A. No, no such motion was ever made by me in this matter and there is no recollection on my part and no indication in or on the file that I ever made any motion to dismiss or nolle as to Cecil Wright.

Q. Mr. Baker, you have made a close examination of the files of the office of the United States Attorney in case Number 11032 and the companion case Number 11074 and also the court files in the office of the clerk of this Court have you not?

A. Yes, Mr. Vien. After you advised me you wanted to take my deposition, at my request you made available to me the files that started during my term as United States Attorney in cases number 11032 and 11074, the latter being the second case in which certain of the defendants in 11032 were charged with the violation of the National Motor Vehicle Theft Act and in which the defendants, including Cecil Wright, entered a plea of guilty after the verdict of the jury had been entered in 11032.

Mr. Vien: That is all.

HAROLD G. BAKER. [235]

CERTIFICATE

State of Illinois,
Saint Clair County—ss.

I, Walter Elliott, a Notary Public within and for the County of Saint Clair and State of Illinois, the officer acting by virtue of authority in Notice to Take Deposition, the original of which is hereto attached and made a part hereof, in the taking of the deposition of said Harold G. Baker, the witness, do hereby certify that previous to the commencement of the examination of the said Harold G. Baker, as witness in the cause entitled Cecil Wright, Petitioner vs. James A. Johnston, No. 23647-S, he was duly sworn to testify the truth in relation to the matter in controversy between the above named Petitioner and Respondent, so far as he should be interrogated concerning the same; that said deposition was taken down by me in shorthand, at the office of the United States District Judge for the Eastern District of Illinois, in the Post Office, at East St. Louis, Illinois, on the 29th day of July, A. D., 1942, commencing at the hour of 11:00 A.M. on said day; that said deposition was taken upon oral interrogatories propounded by H. Grady Vien, Esquire, United States Attorney, and said interrogatories, and the answers thereto were reduced to writing by me, and the foregoing [236] deposition is a full, true and correct transcript of the testimony of said witness, given at the time and place aforesaid, and in the order in which said oral interrogatories and the answers thereto were given.

That the signature of said witness is the genuine signature of said witness, Harold G. Baker:

I further certify that I am not of counsel or attorney for either party in said cause, and am not interested in the outcome of said case.

I further certify that my commission expires on the 27th day of September, 1942, and is, at the time of the making of this certificate, in full force and effect.

Given under my hand and Official Seal, at East St. Louis, Illinois, this 31st day of July, A. D., 1942.

[Seal]

WALTER ELLIOTT

Notary Public.

My commission expires: September 27, 1942.

[Endorsed]: Filed August 3, 1942 [237]

RESPONDENT'S EXHIBIT A
(No) 23647-S

In the District Court of the United States
For the Eastern District of Illinois
Criminal Docket

Docket 11032

Title of Case.

THE UNITED STATES

vs.

ROBERT RAYMOND

CARL SANDERS

JOSEPH HARTMAN

MONTE CRIST

TUCK WRIGHT—whose true Christian name is
to the Grand Jurors unknown.

Strasburg Shelby Co. Bond \$10,000

Indictment—
Postal Law

Attorneys

For U. S.:

Harold G. Baker

For Defendant:

J. D. Allen

Abstract of Costs.	Amount.
	10000 “
	10000 “
Fine,	10000 “
	10000 “

Respondent's Exhibit A—(Continued)

Clerk,
 Marshal,
 Attorney,
 Commissioner's Court,
 Witnesses,

Month.	^{Date} Day. Year	Proceedings
Jun	5 1930	Enter return of Indictment — File Indictment
“	“ “	Enter Order B. W. Issue B. W.
Aug	29 “	File two praecipis—issue 2 subpoenas
“	“ “	Enter order for writ of Habeas Corpus ad Prosequendum for Monte Crist from Indiana State Penn to Danville Sept. 17, 1930 and return
“	“ “	Enter Order for Writ of Habeas Corpus ad Prosequendum for Carl Sanders, Robert Raymond, Joseph Hartman & Tuck Wright from So. Ill. Penn. to Danville Ill. Sept. 17-30 and return
Sept.	8 “	File subpoena. Service on Rono Keefe 9/2/30
“	16 “	Enter plea of not guilty, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright. [238]

Respondent's Exhibit A—(Continued)

Month.	Date Day. Year	Proceedings
Sept.	16, 1930	Atty. J. D. Allen appointed to defend.
"	17 "	File return on Writ of Habeas Corpus ad Pros.
"	17 "	Enter proceeding of trial by jury of Defendants Robert Raymond, Carl Sanders, Joseph Hartman, Tuck Wright.
"	17 "	Enter Verdict of Jury, guilty as to each Defendant and Sentence
"	17 "	Each Defendant 5 yrs. on 1st count, 3 yrs on 2nd count and 2 yrs on 3rd count, in the U. S. Penn. at Leavenworth and fined \$10,000.00. All sentences to be served consecutively and begin on their release or discharge from the So. Ill. Penn.
"	17 "	Issue certified copy of sentence.
"	17 "	Issue Warrant to Convey.
"	18 "	File Subpoena, due service on Wm. Wilson, Otto Wirth, Wm. Foster, Ralph Terry 9/1/30. Returned unexecuted as to Walter C. Bisson
Dec.	5, "	Strike with leave to reinstate as to Dft. Monte Christ

Respondent's Exhibit A—(Continued)

Month.	Date Day. Year	Proceedings
Jan.	16 1931	File B. W. ret's unexecuted—sentenced 9/7/30.
June	22 1934	File petition for modification of sentence and/or probation—Jos. Hartman (see also 11073)
“	22, “	Enter hearing on said Petition. Same denied.
Sept.	17 1930	Issue warrant to convey Robert Raymond.
(Con't to Page 504)		
Case #	11032	The U. S. vs. Robert Raymond, et al.
Nov.	15 1934	File Warrant to Convey Dft. Robert Raymond del to U. S. Pen. at Leavenworth, Kansas on 11/13/34.
“	7 1939	File certified copy of Sentence—duly executed by delivering Tuck Wright to U. S. Pen at Leavenworth, Kansas on November 1, 1939.
June	19, 1941	File Motion & Affidavit for transcript of Record to be furnished in Forma Pauperis.
“	“ “	Enter Order for Clerk to submit transcripts without payment of fees which is to be charged to Constructive Earnings.

Respondent's Exhibit A—(Continued)

Month. ^{Date}
Day. Year

Proceedings

July 3, 1942 File Memo of Findings & Conclusions upon Motion to vacate Judgment—Cecil Wright—Motion denied.

[239]

(Here follows copy of Indictment which was previously set out at pp. 120-124 of this printed record.) [240]

In the District Court of the United States
For the Eastern District of Illinois
Tuesday, September 16, 1930

Present: Honorable Walter C. Lindley,
Judge.

No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN AND TUCK WRIGHT

INDICTMENT

VIOLATION POSTAL LAWS

And Now on this 16th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright each in person. And the said defendants being arraigned on

Respondent's Exhibit A—(Continued)

the indictment herein for plea thereto, each says that he is not guilty as therein charged; and now it appearing to the court that the said defendants are without legal counsel to defend them and are unable to secure such counsel, it is ordered by the Court that J. D. Allen, an attorney and counsellor of this court, be and he is hereby appointed to defend the said Robert Raymond, Carl Sanders, Joseph Hartman, and Tuck Wright. [241]

* * * * *

THE JURY'S VERDICT

We, the Jury find the defendants Carl Sanders, Tuck Wright, Joe Hartman and Bob Raymond guilty in manner and form as charged in the indictment.

No. 11032

(Signed) D. C. BURROW

Foreman

“ S. S. WILSON
 “ MARK W. WISEMAN
 “ G. W. GILLILAND
 “ J. W. SNIDER
 “ CHARLES TILTON
 “ H. R. BOESCHEN
 “ OSCAR FORTH
 “ D. E. FRITZ
 “ WM. BASINGER
 “ HARRY BEARD
 “ STEPHEN GANNON

[Endorsed]: [242]

Respondent's Exhibit A—(Continued)

(Here follows copy of Order of the Trial Court made on September 17, 1930, previously set out at pp. 60-61 of this printed record.)

[243]

(Here follows affidavit of Tuck Wright previously set out at pp. 110-112 of this printed record.) [244]

In the District Court of the United States
For the Eastern District of Illinois

No. 11032

UNITED STATES OF AMERICA

vs.

CECIL WRIGHT

Lindley, Judge.

MEMORANDUM OF FINDINGS AND CON-
CLUSIONS UPON MOTION TO VACATE
JUDGMENT.

The court has examined the motion of defendant Cecil Wright to vacate the original judgment entered September 17, 1930, as well as his application for leave to file the same as a poor person.

The leave to file the motion as a poor person is allowed.

The motion to vacate the judgment is denied.

Nothing occurred at the time of the trial justifying the allegations of fact made by defendant.

Respondent's Exhibit A—(Continued)

Counsel appointed to represent him, though colored, was a reputable, capable and experienced member of the bar. He was given full access to all of the information in the files of the United States Attorney with regard to each defendant. There appeared a transcript of the statements of all witnesses. Thus defendant and counsel were fully advised as to just what would be presented against defendant.

The evidence disclosed that defendant participated in banditry and robbery with the use of a sawed off shot gun and other lethal instruments; that he and his associates overpowered and tied up the watchman and policeman and disclosed and exercised a lawless intent of most serious character. The jury heard the evidence. Each defendant was identified. There was no question as to guilt and the jury could have reasonably returned no other verdict. [245]

In the companion case No. 11074, Wright entered a plea of guilty and received a sentence of five years, made to run consecutively to that imposed in this cause.

Defendant insists that the sentence is void and, therefore, may be vacated, but there is nothing to sustain this assertion.

The circumstances were such as the court believed justified it in denying the motion for continuance and for a separate trial. If error actually occurred, defendant's remedy lay in an appeal.

The court made no agreement of any character

Respondent's Exhibit A—(Continued)

with defendant or his counsel to the effect that if other defendants would plead guilty, defendant would be acquitted. The allegation is pure fabrication.

The confessions of other defendants were received as evidence only against those making them and the jury was expressly so instructed.

The judgments are in the exact form they were entered on the date of entry. There has been no post-dating and no modification. The record speaks for itself.

Defendant has untrammelled and unimpaired assistance from reputable counsel who served him faithfully and properly protected in full all of his rights.

There was no instruction to the jury that defendant should be found guilty but the jury was instructed that each defendant was to be tried only upon the evidence submitted against him and that he must be proved guilty by such evidence beyond all reasonable doubt.

Defendant insists that in sentencing him, inasmuch as he was under execution of sentence in another institution, the court could not impose upon him another to begin at the termination of that which he was then serving. The law is to the contrary. In *Ex Parte Lamar*, 274 Fed. 160 at 176 the Circuit Court of Appeals for the Second Circuit expressly decided this [246] point, saying that the district court was not prohibited from fixing the

Respondent's Exhibit A—(Continued)

date of commencement of the term as the time when the prisoner finished a sentence he was then serving. The court commented that to hold otherwise would be to make a mockery of the law and stultify the course of justice. This decision was affirmed by the United States Supreme Court in 260 U. S. 711. Other courts holding that a sentence of imprisonment may properly commence upon the expiration of a preceding sentence are *Howard v. U. S.*, 75 F. 986; *U. S. v. Farrell*, Federal Case 15,074; 5 D. C. 311; *In re Jackson*, 10 D. C. 24.

I have reviewed the facts, examined carefully the record. Most of what defendant sets forth amounts at the most to an allegation of error in the action of the court at the trial. Such error may be taken advantage of only by appeal. That there was none would seem obvious from the fact that for twelve years, defendant prosecuted no appeal. Such error does not invalidate a judgment. The court has no power at this date to review or modify a sentence entered in 1930, because it is now alleged that error was committed at the time of the trial.

Consequently the motion is denied.

Entered this 3rd day of July, A. D. 1942.

(Signed) WALTER C. LINDLEY

Judge.

[Endorsed]: 11032. U. S. Cecil Wright. Memo of Findings and Conclusions upon Motion to Vacate Judgment. Filed Jul 3, 1942. D. H. Reed, Clerk.

(Respondent's Exhibit A—(Continued))

GOVERNMENT EXHIBIT No. 1

Case No. 140,499-D

STATEMENT OF ROBERT RAYMOND

State of Illinois,
County of Edgar—ss.

I, Robert Raymond, being first duly sworn, depose and state:

I am 25 years of age and my home is in Cleveland, Ohio. I am making this statement in connection with the burglary of the post office at Strasburg, Illinois, on the early morning of April 9, 1930, without any promise of reward, or threats being made, knowing that the same may be used against me.

On the evening of April 8, 1930, Monte Crist, Tuck Wright, Joe Hartman, Carl Sanders and I left Decatur, Illinois, in two automobiles. I was riding with Hartman in a four door sedan, while Crist, Wright and Sanders were in the two door sedan. Both machines were model "A" Fords. We drove around the country and sometime after midnight passed through Strasburg, Illinois, and drove on to Stewardson, Illinois. We drove out on the highway between Strasburg and Stewardson and discussed whether we would make Stewardson or Strasburg, but finally agreed to go to Strasburg. It was agreed that Hartman and I would drive into town and "Take" the night watchman, then signal to the other fellows to come in, which was done.

(Respondent's Exhibit A—(Continued))

We stuck up the nightwatchman and I signalled to the other fellows with a flash light. We searched the watchman and took from him his .25 caliber revolver, badge, keys and some money and then tied his hands behind him and put him in the four door sedan with Carl Sanders guarding him. His keys were not taken until he had been placed in the automobile. At the time, we thought some of the keys would fit the doors of the stores.

After we tied up the watchman, we drove both cars around the corner to the front of the merchandise store and four of us went over to the store and tried the keys on the two front doors, but the keys did not fit and we were unable to open the doors. I went back over to the four door sedan and got a crow bar that we had there and went to the side door of the store and forced it open. Wright, Crist, Hartman and I went into the store, Wright and Crist went to the rear, Hartman over to one side and I went up to the front part of the store. I overheard Wright make a remark about the safe being open and empty. Wright went up the street and was gone about 10 minutes, when he came back and asked for the crow bar. I gave the bar to him and asked him what he was going to do and he replied that he was going to go up the street and see what he could see. I did not see him again until just before we left town. When Wright left with the bar, we went outside the store and saw a truck that had just come into town. He pulled around the corner and Hartman and I jumped in our car

(Respondent's Exhibit A—(Continued))

and went after him. We found him asleep in his truck and stuck him up and took his money from him, as he had nothing else. We took him back to the four door sedan, tied his hands, and put him in the car with Sanders and the watchman. Hartman and I went back over to the merchandise store and saw a truck that had just pulled up in front of the tire store that is located in the rear of the merchandise store. We stuck him up and Hartman and Crist took him in the tire store where they tied his hands and his feet and sat him in the corner. [248]

I went out to the filling station and pumped the glass tank full of gas while Hartman went after the two door sedan, brought it over and filled it with gas and backed it up to the side door of the merchandise store. Crist stood guard in the tire store while this was being done and later went in the merchandise store to load up the car with the loot that had been chosen. Hartman went after the four door sedan and returned with Sanders and the two prisoners. They were taken in the tire store with the third captive and left there.

Just previous to the time that we left town and while we were in the tire store with the prisoners, Wright came back from up the street and I did not see what he had with him. Whatever he had he put in the two door sedan and he, Crist and Hartman got into it and pulled out. We went to Mattoon for breakfast and later went to Sky Line Springs where we stayed until noon. During the

(Respondent's Exhibit A—(Continued))

afternoon we drove back into Decatur and just before reaching town we stopped at the side of Route No. 121 and discussed what we were going to do. Tuck Wright said that he had another job in another small town near Decatur that would be similar to the one at Strasburg, but Crist and I disagreed with him on it. Sanders also disagreed with and later on Sanders told me that he was sore because Wright had entered the post office in Strasburg.

While at Strasburg, Illinois, four of us were armed with .45 caliber Colts automatic revolvers and one with a .38 caliber police special revolver. We also had two 12-gauge shotguns and three Springfield army rifles.

I did not see any of the musical instruments that were taken from Strasburg, Illinois, until we were arrested at Decatur. After our arrest, I saw a guitar hanging on the walls of the Sheriff's office and I was told it was taken from Rommel's house on the night the police made the raid at that place.

Wright has two brothers, a wife and two children living in Mattoon, Illinois, and one brother living in Charleston, Illinois. He is not divorced from his wife, but he does not live with her. Their home is somewhere between 9th and 16th street on Route No. 16 in the city of Mattoon.

(Signed) ROBERT "BOB" RAYMOND

Subscribed and sworn to before me at Paris, Illinois, on this the 14th day of May 1930.

(Signed) RONO KEEFE

Post Office Inspector.

(Respondent's Exhibit A—(Continued))

Witnesses:

(Signed) JEROME WILLIAMSON

(Signed) ROSCOE RIVES

(Signed) ROY JOHNSON

(Signed) R. E. RAGAINS

(Signed) CHARLES DANNY [249]

GOX EX 2

Case No. 140,499-D

STATEMENT OF JOSEPH G. HARTMAN

State of Illinois

County of Edgar—ss.

I, Joseph G. Hartman, being first duly sworn, deposes and state:

This statement is being made in connection with the burglary of the post office at Strasburg, Illinois, on the early morning of April 9, 1930, without any promise of reward, or threats being made against me, knowing that the same may be used in the prosecution of the case.

On the night of April 8, 1930, Carl Sanders, Monte Crist, Tuck Wright, Bob Raymond and I left Decatur, Illinois, in two automobiles. We drove around the country for some time, and I was riding in the four door sedan with Bob Raymond. Sanders, Crist and Wright were riding in the two door sedan. Both of these cars were model "A" Ford machines.

(Respondent's Exhibit A—(Continued))

Some time after midnight, we drove through the town of Strasburg, Illinois, and some one of the fellows suggested that we make that place. It was agreed and Raymond and I drove back into town where we stuck up the night watchman and then signalled with a flash light for the other fellows to come in. I held a gun on the watchman while Raymond searched him. We took his pocketbook, keys, badge and gun and tied his hands behind him. The other car came into town and all of the fellows got out of it. The watchman was taken to the rear of the building where he was searched and he was then placed in the rear of the four door sedan, with Sanders in the front seat to guard him. After we had entered one of the stores we went down the street and made captive of a bread truck driver, who was also searched and placed in the same car with the night watchman. After we had been in town for some time, a third man came in driving a truck and we tied him up in a garage and left him there. When we left town we, also, took the watchman and the driver of the bread truck to this garage and left them.

We got about \$12.00 in money from the robbery at Strasburg and about two baskets full of merchandise. I saw the neck of some kind of a musical instrument in the back end of the two door sedan, but do not know whether it was a guitar or mandolin.

Sometime late the afternoon of the 9th, we ar-

(Respondent's Exhibit A—(Continued)
rived at Decatur, Illinois, and I went to the railroad Y.M.C.A. where I had a room.

(Signed) JOSEPH G. HARTMAN

Subscribed and sworn to before me at Paris, Illinois, on this the 14th day of May, 1930.

(Signed) JEROME WILLIAMSON

Post Office Inspector.

Witnesses:

(Signed) ROSCOE RIVES

(Signed) ROY JOHNSON

(Signed) CHARLES DANNY

(Signed) RONO KEEFE [250]

GOX EX 3

Case No. 140,499-D

STATEMENT OF CARL SANDERS

State of Illinois

County of Edgar—ss.

I, Carl Sanders, being first duly sworn, deposes and state:

This statement is being made in connection with the burglary of the post office at Strasburg, Illinois, on the early morning of April 9, 1930, to aid in the investigation of that case, without any promise of reward, or any threats being made against me, knowing that the same may be used against me.

On the night of April 8, 1930, Monte Crist, Tuck

(Respondent's Exhibit A—(Continued))

Wright, Joe Hartman, Bob Raymond and I, left Decatur, Illinois, in two automobiles. I was riding in a two door Ford sedan with Crist and Wright. Raymond and Hartman were in a four door Ford Sedan. Both were model "A" machines. Sometime after midnight we drove through the town of Strasburg, Illinois, and some of the boys suggested that we make that place. Some one in the crowd said we would have to find the "Night clown," so it was agreed, and Raymond and Hartman drove back into town and circled around the block, found the night man and stuck him up. They then gave us the signal to come in. I was driving the car and we drove up along side of the four door sedan and everyone got out. Some of the fellows took the watchman to the side of a building and tied his hands. They then brought him to the car that Hartman and Raymond were in and placed him in the back seat, while I sat in the front seat, about two hours, during the time the other fellows broke in the stores and post office.

About an hour before we left town Tuck Wright came up to the car and asked the night watchman for the keys to the post office, bank and the stores. The watchman informed him that he did not have any of the keys to the buildings. Wright, at the time, asked the watchman if the .25 caliber automatic revolver belonged to him and he also asked him what he expected to protect with that gun. Wright further stated that he would bring the

(Respondent's Exhibit A—(Continued))

watchman a good gun when he came back to rob the bank. Wright also questioned the watchman as to whether there was a safe in the post office and wanted to know if there was any money in it, but the watchman was unable to inform him. Wright then went away and I did not see him again until after we had left town. When he made mention to the watchman about the post office, I advised him to stay away from it.

Leaving town, Wright, Monte Crist and Hartman were in the two door sedan, while Raymond and I were in the four door sedan, Raymond driving. None of the merchandise taken was placed in the car in which I was riding. We drove from Strasburg to Mattoon to the home of Wright's brothers where we had breakfast. We went from there to Decatur, arriving about noon, going to the home of Lionel Rommel. I noticed that among the loot taken out of the car in which Wright rode, there were 1 guitar, 1 clarinet, and some merchandise. Wright was wearing a gold ring, with a ruby set, bearing the initial "F". We asked him where the musical instruments and ring came from and he told us that he had taken them from the post office in Strasburg. [251]

I do not know if any of the other fellows broke in the Strasburg post office, but do know that they were "Sore" because Wright had gone into it. The fact that Wright entered the post office was one of the things that caused us to split up.

(Respondent's Exhibit A—(Continued))

All of the fellows that were at Strasburg were armed, Monte Crist had a .45 caliber Colt revolver, in fact all of the fellows had the same kind of a gun, except myself and I did not have any revolver. However, in the car in which I sat with the watchman, and a bread truck driver, who was brought to the car, for me to guard, there were 1 sawed-off shot gun and three army rifles laying at the feet of the prisoners. I do not know where the revolvers and rifles came from as the fellows had them when I joined them on April 1, 1930, at Casey, Illinois.

When Wright came up to the car to talk to the watchman about the post office, he wore a mask. I did not see any of the other fellows wearing a mask while at Strasburg.

(Signed) CARL SANDERS

Subscribed and sworn to before me at Paris, Illinois, on this the 14th day of May, 1930.

(Signed) RONO KEEFE

Post Office Inspector

Witnesses:

(Signed) JEROME WILLIAMSON

(Signed) ROSCOE RIVES

(Signed) ROY JOHNSON

(Signed) CHARLES DANNY [252]

(Respondent's Exhibit A—(Continued))

GOVT. EX. 4

STATEMENT OF CARL SANDERS

I, Carl Sanders, being now in the office of the State's Attorney of Macon County, Illinois, make the following statement of my own free will, no threats nor promises of any kind being made to me to get me to make this statement, and being informed by Victor C. Miller, State's Attorney of Clark County, Illinois, that any statement that I make may be used against me; this statement is being made in the presence of Victor C. Miller, Harry O. Coldren, Sheriff of Clark County, Illinois, F. A. Doolen, policeman and E. L. Doyle, Deputy Sheriff on this the 25th day of April, 1930.

My name is Carl Sanders and my home is Marblehead, Illinois, and my age is 34 years.

About a month ago Joe Hartman, "Shorty" Beasley and I were in Casey, Illinois and we saw two boys and one girl leave Casey about twelve o'clock at night. We knew that the boys and girls were from Greenup and had seen the boys and girl in a restaurant and they were talking pretty lively in the restaurant. The boys said that they were not going to take the girl home and she said "hell if they did not want to take me home I'll walk" and I think that Hartman or Beasley said "she did not have to walk that we would take her home." The other two boys said "we will take her home." They left and got in a car and we got into Hart-

(Respondent's Exhibit A—(Continued))

man's car and took out after them figuring that we would stop them and take the girl away from them and make the boys sore. We could not catch them after following them half way between Casey and Greenup. They turned into a barn lot and drove the car right into a barn and we stopped out along the road by a big tree and Hartman got out and went over to the barn and he came back *back* and said "Oh hell they only had two dollars on them. Hartman took a gun with him when he went over to the barn in fact he was the only one that had a gun. The gun was a .45 Colt automatic. Beasley and I stayed in the car while Hartman went into the barn and held the boys up.

About a week later Joe Hartman, Mark "Smiles" Bowles and I were in Casey one night, we planned to hold up "Sycamore" Hills and we figured out the way to do it before we started and decided that we would take him just as he got out of his car. We drove out on the pavement and parked about a block from his house about three o'clock in the morning; "Smiles" Bowles stayed in the car and Sycamore Hills drove by Bowles as he was parked. Previously Joe Hartman and I had gone to the barn and were waiting for Hills to drive into the garage. As he got out of the car I put a .45 Colts Automatic on him, told him to put his hands in the air which he did and Hartman went through his pockets. When he was told to put his hands up Hills said here is the change bag take it. He pulled

(Respondent's Exhibit A—(Continued))

the change bag out of his pocket and there was \$18.00. We got around \$80.00 from Hills and my share was \$16.65. Hartman was armed with a .45 Colts. After we held him up we drove back to town and I went back to the farm where I was working.

In a couple of weeks later about April 13th, 1930 on Sunday night Joe Hartman, Bob Raymond, Monte Crist and I were driving around out in the country starting to a stone quarry to get some Nitro Glycerin, fuses and caps, and before we got to the quarry we ran onto a car approaching us, Crist was driving the car, and Crist pulled across the road and stopped [253] the car, Crist, Bob Raymond and Joe Hartman got out of the car and I got under the wheel keeping the engine of our car running, and the other fellow put guns on a girl and a boy and they told them to get out of the car and they were searched at the point of the guns and got a diamond ring, wrist watch (man's wrist watch) and I don't know whether they got any money or not.

The same night about an hour and a half later we ran across another car approaching us and I was driving the car, I drove across-wise the road in front of the car and stopped it, Monte Crist, Joe Hartman, Bob Raymond got out of the car and went up to the car and made the two men get out and held them up and got a wrist watch and tied both of them up with wire and took them to a school house about a half mile away. Before we left the car we cut the spark plug wires so that they could

(Respondent's Exhibit A—(Continued)

not follow us. We took them to the school house so that they would not be out in the cold.

This Sunday night we had three Springfield rifles, two sawed off shot guns, two Colt .45 automatics, a 32, 38, 25 caliber revolvers in the car with us.

About in an hour or more we saw a car approaching west of Westfield in Clark County, Joe Hartman driving, and he drove across the road and compelled the car to stop and Joe Hartman, Monte Crist and Bob Raymond got out of the car and went up to the car and made him get out of the car and searched him and then took him to a school house just over the line in Coles County and stripped him of his clothes and left him and went back and took his car and drove it away with us, Bob Raymond driving the car away, this was a Ford Roadster Model A.

The next night, Monday night I think after we had driven to Decatur, Illinois and back, we broke in the back door of a Kroger Store in Casey and stole some cigarettes. I think about a carton and some cheese and crackers.

After we had held up the two boys and the girl west of Casey and Sycamore Hills a week or so later, Joe Hartman, Bob Raymond, Tuck Wright, Smiley Bowles came and got me at Smiley Bowles' home and told me that they were going to pull a big job at Mattoon, so I went with them in the Ford sedan that they were driving and went to a private garage and Bob Raymond and Monte Crist went in the garage and got a Reo Truck and we started

(Respondent's Exhibit A—(Continued))

to Mattoon and went as far as Westfield where the truck got on fire. We stopped and put out the fire and abandoned the truck on the street in Westfield leaving the truck right in the middle of the street.

On Thursday night about April 10th, 1930, Bob Raymond, Joe Hartman, Monte Crist, Tuck Wright and I drove two Ford sedans down to Strasburg, Illinois, and I stayed in the car and the other fellows brought the night policeman to the car where I was and left him with me and I talked to the policeman while the other boys were robbing a store. They got a car load of merchandise and loaded it into the other car and after that was done the policeman was tied up and left in the store that they had robbed.

A truck driver was tied up and put him in the same store with the policeman. He was all ready there when I saw him.

Smiley Bowles and Joe Hartman told me that Monte Crist, Bob Raymond, Tuck Wright, Smiley Bowles and Joe Hartman on the Hunk Finn holdup and that they got between \$100.00 and [254] \$170.00. They told me that they went in the back door and Bowles and Hartman stayed on the outside and watched and all of them were armed with guns.

(Signed) CARL SANDERS

Witnesses:

(Signed) VIRGIL BELCHER

(Signed) EDGAR L. DOYLE

(Signed) H. O. COLDREN

(Signed) L. E. STEPHENSON [255]

(Respondent's Exhibit A—(Continued))

GOVT. EX. 5

STATEMENT OF JOSEPH GLENN
HARTMAN

I, Joseph Glenn Hartman, being now in the office of the State's Attorney of Macon County, Illinois, make the following statement of my own free will, no threats nor promises of any kind being made to me to get me to make this statement, and being informed by Victor C. Miller, State's Attorney of Clark County, Illinois, that any statement that I may make may be used against me. This statement is being made in the presence of Victor C. Miller, State's Attorney of Clark County, Illinois, Harry O. Colgren, Sheriff of Clark County, Illinois, V. A. Belcher, Deputy sheriff and C. A. Thrift, sheriff of Macon County, Illinois, and L. E. Stephenson, Assistant State's Attorney of Macon County, Illinois, on this 25th day of April, 1930.

My name is Joseph Glenn Hartman and my age is 24 years and live at Casey, Illinois.

About six weeks ago on Saturday night about one o'clock in the morning, Monte Crist, Bob Raymond, Carl Sanders, Tuck Wright and I met at Sycamore Hills' Skating rink, and got to talking and needing some money decided to rob Huck Finn who is a clothing store man in Casey; Tuck Wright, Bob Raymond and I got in a Pontiac Coupe and the two others got in Ford Coupe and drove down to the highway and parked the car right at the side of the

(Respondent's Exhibit A—(Continued)

store. Tuck Wright, Bob Raymond and Monte Crist went to the back door of the store and before they got to the back door a fellow by the name of Markwell came out of the back door so they made Markwell go back into the store. Tuck Wright, Bob Raymond and Monte Crist went into the store and held Huck Finn up. One of the fellows in the inside of the store threw a gun *threw* the front door. Boy Raymond went on the outside of the store and got the gun and General Bragg was standing across the street so Bob Raymond went and got Bragg and made him go into the Store. They got \$111.17 and on the split I got somewhere around \$22.00 out of the holdup. We drove out of Casey to the Oak Grove School where the split was made. During the time they were holding up the store I stayed in the car watching to give the alarm if anyone came up.

The next Saturday night Carl Sanders, Ralph Beasley and I went out west of Casey in my Ford Coupe following two boys and a girl that we had seen in the White Way Cafe. We had been going to Greenup to dances and had seen the girl there before and we followed them and saw them turn into a barn and I parked out in the road and I got out and went into the barn, with my hat pulled down over my face told them to crawl out of the car and stand in the light of the car. I had a 45 Colt automatic with me and I told them to lay their pocket books and money on the fender and I

(Respondent's Exhibit A—(Continued)

searched one of the fellows and I got \$3.95 and went back to the car and went on into Casey. During the time that I held up the two boys and the girl, Sanders and Beasley stayed in the car.

Carl Sanders, Smiley Mark Bowles and I met at Sycamore Hills' place of business and about when he got ready to go home we planned to hold him up, so we left before he left and went over to Hills' Garage and waited for Hills to come, parking the car on the pavement about two blocks away. When Hills came in Sanders put a gun on him and took between \$75.00 and \$80.00 off of him. I took the money off of Hills. Smiley [256] Bowles stayed at the car. Sanders and I were masked. This was the next Sunday night I think after we had held up the two boys and girl. We three split the money and I got twenty-eight dollars.

The next job we pulled was at Strasburg, Illinois, when Monte Crist, Bob Raymond, Tuck Wright, Carl Sanders and I had been to Terre Haute, Indiana and had got some beer to drink, we went back to Casey and while riding around we decided to go to Strasburg and hold up the general store for money and we drove on over to Strasburg and one car went into town and the other car stayed out of town. Bob Raymond and either Tuck Wright or Monte Crist went in and tied the town marshal and flashed a light and we drove on into town with the other car and Crist and Raymond went to the general store and pried the back door open and

(Respondent's Exhibit A—(Continued))

Crist, Raymond and I went inside and Sanders stayed in the car with the night watchman and I don't know where Wright went but I think he went to night watchman's office and then there was a bread truck came in Raymond and I went down and tied him up and put him in the car with the night watchman. We went back down to the store and another truck came up and Raymond and Crist tied him up and took him to a garage and then put the night watchman and the other fellow in with him. When I got the second truckman tied up I went outside and they were in the cars ready to go. We got around \$12.00 in the general store. Tuck Wright told the night watchman that they would return and give him a good gun. I do not know how much merchandise we got out of the store but I did not take any of it. We drove to Sky Line Springs that night and stayed there in the afternoon then came to Decatur.

We laid around in Decatur until Sunday night and we then went back down to Casey and laid over about four miles east of Casey all day sleeping in a barn and went to Martinsville for supper and went over southeast of Casey and held up a girl and her fellow. The girl was Juanita Cackley and I knew her. We drove up beside them and ordered them to get out of the car and three of us got out all with guns. Sanders or Crist went over to the car and I stood back of the car and they got about \$7.00 off of him, a diamond ring, and they took the

(Respondent's Exhibit A—(Continued))

distributor brush off of his car so he could not follow us.

We then went a mile south of Casey and held up Ernest Blood and Vaughn Arney. As we met them we pulled in front of them and turned them around Christ and Raymond rode with them going two miles west and one half north to a school house and tied them up and gagged them got a pocket watch and a wrist watch and I don't know whether any money was gotten off of them or not. We were armed with guns. On this night we had a lot of guns in the car consisting of Springfield rifles, 45, 38, 32, 25 automatics and revolvers.

We went north of Oak Grove Log Cabins and started east on the Westfield road and over took a fellow driving a Ford Roadster, who was a school teacher by the name of Horner Raymond and I got out after we had stopped him and took twelve dollars from him and took him in our Ford sedan and turned around and went back west to a school house and took him in and tied him up took his clothes, consisting of a suit and top coat and left him in his underwear. We got wrist watch off of him. We were armed with Colt 45 automatics. [257]

We went back east and to a mile north of Westfield driving the Ford roadster that we had taken from Horner and flagged a guy but he would not stop and he passed us in the Ford sedan and the Ford roadster turned on the lights and the fellow pulled up beside the road Raymond, Crist and I

(Respondent's Exhibit A—(Continued))

got out searched him for guns and his money and then took him north about two miles and east a mile and took him to a school house and tied him up and Monte Crist took one fellows suit and we got ten dollars off of the two fellows. We were armed when he held him up.

We went east and north through Kansas and went to Paris and went up through Danville and I got in the Ford sedan and went to sleep in the back of the car and when I woke up they had parked the Ford Roadster along the road and we laid around in that country Monday and Tuesday and Tuesday night coming down from Watseka we went west from Watseka seventeen miles and turned north at Gilman and overtook four fellows and we took them back to a school house and got ten or eleven dollars from them, a fountain pen, pencils a wrist watch and pocket watch, and come on south went into the edge of Bloomington and eat breakfast and come on into Decatur getting there about ten o'clock and stayed at the Lincoln Hotel and went out to Charleys Wilson's that night where we stayed until arrested.

(Signed) JOSEPH GLENN HARTMAN

Witnesses.

(Signed) C. A. THRIFT

(Signed) VIRGIL BELCHER

(Signed) H. O. COLGREN [258]

(Respondent's Exhibit A—(Continued))

GOVT EX 6

STATEMENT OF ROBERT RAYMOND.

I, Robert Raymond, being now in the office of the State's Attorney of Macon County, Illinois make the following statement of my own free will, no threats nor promises of any kind being made to me and being informed by L. E. Stephenson, Assistant State's Attorney of Macon County, Illinois that any statement that I may make may be used against me; this statement is being made in the presence of C. A. Thrift, V. A. Belcher, Victor C. Miller and Harry O. Coldren on this the 25th day of April 1930.

My name is Robert Raymond and I am 25 years of age and my home is Cleveland, Ohio.

About six weeks ago Monte Crist, Slim Wright, Smiles Bowles, Joe Hartman, Carl Sanders and I met in Casey, Illinois and decided to rob Huck Finns' store so we drove beside the store and parked them and Joe Hartman and one of the other boys stayed in the two cars and the rest of us got out and went to the back door and we caught a fellow that had just come out of the store and we took him back with us and made him knock on the door and call to Huck to open the door. Huck came to the door and opened it rushed in and three fellows were sitting at a table and we lined all of the men up besides the rack and we went through them and got three or four dollars off the table and

a couple of dollars in change in the safe and got the rest off the men we had lined up, the biggest part of it coming off of Huck Finn. The four of us who went in were armed with 45 Colt automatic and two of us were masked. Monte Crist and Smiles Bowles were the two that was masked. A fellow came around snooping and one of the fellows threw a gun *threw* the front door and went out and got the fellow snooping around getting him across the street. He was brought in and lined up with the rest and then all were tied with neck ties. The fellow was called General Bragg or general nuisance or something. After we got them all tied up we all left.

Joe Hartman, Carl Sanders, Monte Crist and I stopped on the road on our way into Casey, and planned to rob Sycamore Hills and went down to his place of business and watched it and about when he was ready to close up his business we left and went down to his garage and Carl Sanders and I planted ourselves in the garage and Hartman and Crist stayed in the car and when he came in and got out of his car we put our guns on him and tied him up. When Sanders put his gun on him ^{he} threw the money bag in the corner. We got the money bag and left. We got around \$75.00 on this job.

Carl Sanders, Joe Hartman, Slim Wright, Monte Crist and I went down to Strasburg, Illinois and drove through and went on to Stewardson and then came back and parked one car about a quarter of a

mile north of town and Joe Hartman and I went back to the town in one of the cars and found the night marshal on the corner and I drove up in front of him and put a gun on him and tied him up and put in the back of the car and got a little money off of him. I signalled to the other car to come on in with a flash light and they came in. We parked the cars on the main street opposite the main [259] store of the town and went in the store from the side entrance and some of the boys got some cigarettes, candy, a couple of pairs of shoes, a grip and I do not know what all and about that time a truck driver rolled in so I went after him and he turned around the corner and I thought he went on out of town but Joe Hartman and I found him in his truck asleep. We put a gun on him and tied him up and took him to the car and put him in the car with the town marshal. *We some* money off of him, I do not know how much. Another fellow in a truck pulled up to a tire store back of the *gneral* store and Monte Crist, Joe Hartman and I went and put our guns on him and tied him up and took him into the tire store and then got the town marshal and the other truck driver and put them all three in the tire store. We got some money off of the second truck driver also a 32 Harrison & Richardson revolver. We then all got into the two cars and left town and went around by Charleston and then went to Decatur.

On Sunday night, April 13th 1930 Monte Crist, Joe Hartman, Carl Sanders and I went from Deca-

(Respondent's Exhibit A—(Continued))

tur, Illinois to Casey getting there about eight thirty and drove out east of Casey on a gravel road about a mile and one-half east of the hard or farther I guess and saw a car coming up behind us and we pulled cross-wise of the road and stopped the car and Hartman, Crist and I got out and put our guns on a boy and a girl who was in the car and made them get out and we got some money off of the boy and a wrist watch I think off of him and a diamond ring off of the girl, tied his hands together and I took the distributor brush off and we drove on south and then swung west and crossed the hard road about a mile and come across two men in a Ford touring car stopped them and turned them around and took them to a school house and took them inside and tied them up and took what they had, consisting of a couple of watches and some money that was dropped in the car and some money off of them. I do not know how much money we got. One of the fellows was a fat fellow and the other was slim. We left the car behind the school house and left the fellows in the school house tied up and drove on towards Charleston and about a mile from the Charleston hard road we came across a Ford roadster headed towards Westfield and we went after him and stopped him west of Westfield. We pulled in ahead of him and ordered him to stop and I ordered him to get out of his car and to get into our car and we took him back to a church a mile from the Charleston hard road,

(Respondent's Exhibit A—(Continued))

stripped him tied him up and left him in the church. We took his car with us and drove his car away. We got a wrist watch off of him and some money.

We then went west of Westfield and headed for Kansas and we met a Whippet Coupe with two fellows in it and we swung across the road ahead of them and stopped them and I got in the car with them and made them turn around and took them to a school house just south of Kansas a little ways. I put a gun on them and made them drive the car to the school house. We took them into the school house and stripped the little fellow, tied both of them up got a watch or two, a ring or two and some money off of them and left the car in back of the school house.

We headed up towards Danville, Illinois and dropped the car and went up through Valpariaso, Indiana and then back through Watseka and Gilman and just out of Gilman, north we drove along side of a car with four fellows in it, this was [260] a Pontiac sedan. We turned them around and took them back north and east of Gilman to some little town and tied them up in a school house. Joe Hartman and I got into the car with the four fellows putting them in the back seat and Joe and I got in the front seat and drove the car. We got a ring, a watch or two and some money off of them. We left them in the school house and brought the car back to Gilman and left it there and came to Decatur.

(Respondent's Exhibit A—(Continued))

Slim Wright, Joe Hartman, Carl Sanders, Smiles Bowles and I along with Monte Crist planned to do a job in Mattoon and wanted a truck and I was told where the truck was and they took me to where the truck was and I went and got it out of a garage or barn and we drove up the hard road to Westfield and when we got to Westfield the truck got on fire and we abandoned the truck in the middle of the street.

Monte Crist, Carl Sanders, Joe Hartman and I went to Charleston and Joe and I went in the depot of the Big Four and there was two fellows sleeping on the floor and one fellow sweeping up in the ticket office and I put a gun on the fellow that was sweeping and Joe Hartman put a gun on the two fellows on the floor and I made my man open up the safe and the cash drawer and got \$100.00 out of the safe and a 25 off of the window and a 32 off of the expressman and tied all of them up and put them in the back room and we left and came back to Decatur, Monte Crist and Carl Sander stayed in the car while Joe and I pulled the job.

(Signed) ROBERT RAYMOND

Witnesses.

(Signed) C. A. THRIFT

(Signed) VIRGIL BELCHER

(Signed) H. O. COLDREN

(Signed) L. E. STEPHENSON [261]

(Respondent's Exhibit A—(Continued))

June 2, 1930

GOVT. EX 7

STATEMENT OF CECIL WRIGHT

I, Cecil Wright, being first informed by Special Agents A. M. Gladsteen and M. P. Scanlow of the U. S. Department of Justice of my constitutional right do hereby make the following statement voluntarily, free from duress and without threat or promises of immunity.

I am 24 years of age and was born at Charleston, Ill.

I first met Mark Bowles at Casey, Ill about March 1, 1930. At that time I was with Monte Chris's gang.

I was released from Pontiac Ill. Reformatory on April 28, 1927 on Parole. I was paroled to Pat Nacy of Mattoon Ill. Later I was changed over to a Mr. Phillips of the Browns Shoe Factory, Mattoon, Ill. In the summer of 1928 I came to East Chicago, Indiana where I lived with my mother

C. W.

Mrs. Dora Wright. I worked around East Chicago, Ind. until about the first part of March 1930, when Monte Criss Bob Raymond and Ed Murray came to me and told me that I had violated my Illinois Parole and that I was wanted there. Criss promised me \$2000.00 in cash if I would go back to Mattoon, Ill and join his gang—Criss gave me \$100. cash and promised to give me the rest later on. I never did get the \$1900—except about \$300 later on.

(Respondent's Exhibit A—(Continued))

Enroute to Mattoon, Ill from East Chicago, Ind Criss told me about robbing the Humboldt Ill bank and that he and Bob Raymond had pulled a robbery at the Sullivan, Ill Armory—I saw the guns they got from the Armory job. There were 3 Rifles 10 Automatic Pistols—2 or 3 thousand

C. W.

rounds of rifle ammunition and 2 pair of field glasses and several gun cleaning outfits. Criss gave me a 45 Colt [262] Automatic Pistol #304323 which was taken in the Sullivan, Ill. Armory job. Later on he gave one of the guns to Bowles. The *serial* number was filed off.

I was with the Criss gang about a month and a half. I accidentally shot myself in the left hand and while I was waiting for the hand to heal, Criss gave me a Ford Sedan to drive to East Chicago, Ind. The Ford is a stolen car and was stolen by Criss. I don't know where the car was stolen from. I called for Mark Bowles whom I knew as "Smiles" and requested him to accompany

C. W.

me to East Chicago, Ind. where we *planed* on finding work. We arrived in East Chicago, Ind the first part of May 1930. I attempted to find work but was not *sucesful*. On May 24, 1930 Bowles and I drove to SoBend, Ind. We stayed there all day May 24, 1930—Bowles stayed there and I drove to Mattoon, Ill to see my wife.

I returned to East Chicago, Ind and found

(Respondent's Exhibit A—(Continued))

Bowles at my Mothers place—He and I then drove to South Bend Ind in order to redeem a gun he had put up as security. I paid the \$3.00 loan off to a fellow named Joe, who works for a fellow who runs a still at 1232—No Bendix Drive.

We left East Chicago, Ind about 12 midnite Tuesday May 27, 1930

C. W.

and arrived in South Bend about 2 A. M. May 27, 1930—We went directly to Rose's place 1224 No Bendix Drive. Rose's place was locked up. While at Rose's place 3 men drove up in a new Ford Coupe—We, Bowles and I, thought they were police so we beat it and drove out in the country and waited until day light when we went into SoBend and saw Rose. It was at this time that I paid off the loan on Marks gun to Joe. I do not know Joe's last name. [263]

I know nothing whatever about the South Bend, Ind Armory Job.

Both Bowles and I knew that Criss had stolen the Ford Sedan.

(Signed) CECIL WRIGHT

Witness

(Signed) A. M. GLADSTEIN,

Special Agent, U. S. Department of Justice

(Signed) M. P. SCANLON,

Special Agent, U. S. Dept. of Justice [264]

(Respondent's Exhibit A—(Continued))

District Court of the United States of America
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be true copies of:

Docket Entries,

Indictment,

Plea of Not Guilty,

Verdict of Jury,

Proceedings of Jury Trial, Sentence, and Return of Marshal,

Motion for Continuance,

Memorandum of Findings and Conclusions Upon Motion to Vacate Judgment, and Government Exhibits numbered from 1 to 7, inclusive, in the Matter of United States of America -vs- Robert Raymond, et al., Criminal No. 11032, as fully as the same appear from the originals now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 6th day of July, A. D. 1942.

D. H. REED,

[Seal]

Clerk. [265]

CERTIFICATE OF CLERK, UNITED STATES
DISTRICT COURT TO TRANSCRIPT OF
RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 288 pages, numbered from 1 to 288 inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the designation of contents of record on appeal in the cause entitled Cecil Wright, vs. James A. Johnston, on Habeas Corpus, No. 23744, as the same remain on file and of record in the office of the Clerk of said Court, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$66.20; that the said amount has been charged against the United States.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 22nd day of December, A. D. 1942.

[Seal]

WALTER B. MALING,
Clerk.

By W. E. VAN BUREN,
Deputy Clerk. [287]

[Endorsed]: No. 10331. United States Circuit Court of Appeals for the Ninth Circuit. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, Appellant, vs. Cecil Wright, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed December 22, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10331

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Appellant,

vs.

CECIL WRIGHT,

Appellee.

AMENDED STATEMENT OF POINTS TO BE
RELIED ON IN APPEAL AND DESIGNATION OF CONTENTS OF RECORD TO BE PRINTED.

James A. Johnston, Warden of the United States Penitentiary, Alcatraz, California, appellant herein,

hereby designates the entire record filed with this Court, save and excepting pages 266 to 286 inclusive, which are the transcripts of testimony of June 27, 1942, and May 29, 1942, filed November 16, 1942, before the District Court of the United States for the Northern District of California in case number 23647, as necessary for the consideration of the appeal, and the following constitute the points to be relied upon by him on appeal:

(1) That the Honorable William Denman, United States Circuit Judge for the Ninth Circuit, should have denied the petition for writ of habeas corpus filed by appellee before him.

(2) That the Honorable William Denman, United States Circuit Judge for the Ninth Circuit erred when he ordered the appellee discharged from the custody of appellant.

(3) That the sentences imposed against appellee by the United States District Court for the Eastern District of Illinois are valid existing judgments presently in full force and effect and justifiable cause for the present continued detention of appellee by appellant.

Respectfully submitted,

FRANK J. HENNESSY,

United States Attorney,

A. J. ZIRPOLI;

Assistant United States At-
torney,

Attorneys for Appellant.

Dated: January 12, 1942.